

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2830, AS REPORTED
OFFERED BY M____.**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

Sec. 1. Short title and table of contents.

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

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

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

Subtitle C—Other Provisions

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

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

2

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

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

TITLE III—OTHER PROVISIONS

- Sec. 301. Interest rate for 2006 funding requirements.
- Sec. 302. Interest rate assumption for determination of lump sum distributions.
- Sec. 303. Interest rate assumption for applying benefit limitations to lump sum distributions.
- Sec. 304. Distributions during working retirement.
- Sec. 305. Other amendments relating to prohibited transactions.
- Sec. 306. Correction period for certain transactions involving securities and commodities.
- Sec. 307. Recovery by reimbursement or subrogation with respect to provided benefits.
- Sec. 308. Exercise of control over plan assets in connection with qualified changes in investment options.
- Sec. 309. Clarification of fiduciary rules.
- Sec. 310. Government Accountability Office pension funding report.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

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

TITLE VI—INVESTMENT ADVICE

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

TITLE VII—BENEFIT ACCRUAL STANDARDS

- Sec. 701. Benefit accrual standards.

TITLE VIII—DEDUCTION LIMITATIONS

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

TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED
CONTRIBUTION PLANS

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

TITLE X—PROVISIONS TO ENHANCE HEALTH CARE
AFFORDABILITY

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

TITLE XI—GENERAL PROVISIONS

- Sec. 1101. Provisions relating to plan amendments.

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 further by inserting after section
16 301 the following new section:

17 “MINIMUM FUNDING STANDARDS

18 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM
19 FUNDING 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 aggre-
18 gate, 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.—In
6 the case of a single-employer plan, if the employer
7 referred to in paragraph (1) is a member of a con-
8 trolled group, each member of such group shall be
9 jointly and severally liable for payment of such con-
10 tributions.

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

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

15 “(A) IN GENERAL.—If—

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

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

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

16 “(i) in the case of a single-employer
17 plan, the minimum required contribution
18 under section 303 for the plan year shall
19 be reduced by the amount of the waived
20 funding deficiency and such amount shall
21 be amortized as required under section
22 303(e), and

23 “(ii) in the case of a multiemployer
24 plan, the funding standard account shall
25 be credited under section 304(b)(3)(C)

1 with the amount of the waived funding de-
2 ficiency and such amount shall be amor-
3 tized as required under section
4 304(b)(2)(C).

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

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

19 “(A) the employer is operating at an eco-
20 nomic loss,

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

24 “(C) the sales and profits of the industry
25 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 contribution 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
12 subparagraph—

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 to each af-
19 fected party (as defined in section
20 4001(a)(21)). Such notice shall include a de-
21 scription of the extent to which the plan is
22 funded for benefits which are guaranteed under
23 title IV and for benefit liabilities.

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.—Paragraph (1) shall
22 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 substantial business hardship (as deter-
23 mined under subsection (c)(2)) and that a waiver
24 under subsection (c) (or, in the case of a multiem-

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

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

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

 “Sec. 302. Minimum funding standards.”.

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

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

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

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

22 “SEC. 303. (a) MINIMUM REQUIRED CONTRIBU-
23 TION.—For purposes of this section and section
24 302(a)(2)(A), except as provided in subsection (f), the

1 term ‘minimum required contribution’ means, with respect
2 to any plan year of a single-employer plan—

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

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

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

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

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

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

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 of the shortfall
12 amortization installments for such plan year with re-
13 spect to the shortfall amortization bases for such
14 plan year and each of the 6 preceding plan years.

15 “(2) SHORTFALL AMORTIZATION INSTALL-
16 MENT.—The plan sponsor shall determine, with re-
17 spect to the shortfall amortization base of the plan
18 for any plan year, the amounts necessary to amor-
19 tize such shortfall amortization base, in level annual
20 installments over a period of 7 plan years beginning
21 with such plan year. For purposes of paragraph (1),
22 the annual installment of such amortization for each
23 plan year in such 7-plan-year period is the shortfall
24 amortization installment for such plan year with re-
25 spect to such shortfall amortization base. In deter-

1 mining any shortfall amortization installment under
2 this paragraph, the plan sponsor shall use the seg-
3 ment rates determined under subparagraph (C) of
4 subsection (h)(2), applied under rules similar to the
5 rules of subparagraph (B) of subsection (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 the excess (if any)
9 of—

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

12 “(B) the sum of—

13 “(i) the present value (determined
14 using the segment rates determined under
15 subparagraph (C) of subsection (h)(2), ap-
16 plied under rules similar to the rules of
17 subparagraph (B) of subsection (h)(2)) of
18 the aggregate total of the shortfall amorti-
19 zation installments, for such plan year and
20 the 5 succeeding plan years, which have
21 been determined with respect to the short-
22 fall amortization bases of the plan for each
23 of the 6 plan years preceding such plan
24 year, and

1 “(ii) the present value (as so deter-
2 mined) of the aggregate total of the waiver
3 amortization installments for such plan
4 year and the 5 succeeding plan years,
5 which have been determined with respect
6 to the waiver amortization bases of the
7 plan for each of the 5 plan years preceding
8 such plan year.

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

12 “(A) the funding target of the plan for the
13 plan year, over

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

18 “(5) EXEMPTION FROM NEW SHORTFALL AM-
19 ORTIZATION BASE.—

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

1 “(B) TRANSITION RULE.—

2 “(i) IN GENERAL.—In the case of a
3 non-deficit reduction plan, subparagraph
4 (A) shall be applied to plan years begin-
5 ning after 2006 and before 2011 by sub-
6 stituting, for the funding target of the plan
7 for the plan year, the applicable percentage
8 of such funding target determined under
9 the following table:

“In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2007	92 percent
2008	94 percent
2009	96 percent
2010	98 percent.

10 “(ii) LIMITATION.—Clause (i) shall
11 not apply with respect to any plan year
12 after 2007 unless the ratio (expressed as a
13 percentage) which—

14 “(I) the value of plan assets for
15 each preceding plan year after 2006
16 (as reduced under subsection
17 (f)(4)(A)), bears to

18 “(II) the funding target of the
19 plan for such preceding plan year (de-
20 termined without regard to subsection
21 (i)(1)),

1 is not less than the applicable percentage
2 with respect to such preceding plan deter-
3 mined under clause (i).

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

8 “(I) to which this part (as in ef-
9 fect on the day before the date of the
10 enactment of the Pension Protection
11 Act of 2005) applied for the plan year
12 beginning in 2006, and

13 “(II) to which section 302(d) (as
14 so in effect) did not apply for such
15 plan year.

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

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

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

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

12 “(A) the value of plan assets for the plan
13 year (as reduced under subsection (f)(4)(B)),
14 bears to

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

18 “(e) WAIVER AMORTIZATION CHARGE.—

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

1 “(2) WAIVER AMORTIZATION INSTALLMENT.—
2 The plan sponsor shall determine, with respect to
3 the waiver amortization base of the plan for any
4 plan year, the amounts necessary to amortize such
5 waiver amortization base, in level annual install-
6 ments over a period of 5 plan years beginning with
7 the succeeding plan year. For purposes of paragraph
8 (1), the annual installment of such amortization for
9 each plan year in such 5-plan year period is the
10 waiver amortization installment for such plan year
11 with respect to such waiver amortization base.

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

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

22 “(5) EARLY DEEMED AMORTIZATION UPON AT-
23 TAINMENT OF FUNDING TARGET.—In any case in
24 which the funding shortfall of a plan for a plan year
25 is zero, for purposes of determining the waiver am-

1 ortization charge for such plan year and succeeding
2 plan years, the waiver amortization base for all pre-
3 ceding plan years shall be reduced to zero.

4 “(f) REDUCTION OF MINIMUM REQUIRED CONTRIBU-
5 TION BY PRE-FUNDING BALANCE AND FUNDING STAND-
6 ARD CARRYOVER BALANCE.—

7 “(1) ELECTION TO MAINTAIN BALANCES.—

8 “(A) PRE-FUNDING BALANCE.—The plan
9 sponsor of a single-employer plan may elect to
10 maintain a pre-funding balance.

11 “(B) FUNDING STANDARD CARRYOVER
12 BALANCE.—

13 “(i) IN GENERAL.—In the case of a
14 single-employer plan described in clause
15 (ii), the plan sponsor may elect to maintain
16 a funding standard carryover balance, until
17 such balance is reduced to zero.

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

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

23 “(II) had a positive balance in
24 the funding standard account under
25 section 302(b) as in effect for such

1 plan year and determined as of the
2 end of such plan year.

3 “(2) APPLICATION OF BALANCES.—A pre-fund-
4 ing balance and a funding standard carryover bal-
5 ance maintained pursuant to this paragraph—

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

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

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

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

17 “(A) IN GENERAL.—Except as provided in
18 subparagraphs (B) and (C), in the case of any
19 plan year in which the plan sponsor elects to
20 credit against the minimum required contribu-
21 tion for the current plan year all or a portion
22 of the pre-funding balance or the funding
23 standard carryover balance for the current plan
24 year (not in excess of such minimum required
25 contribution), the minimum required contribu-

1 tion for the plan year shall be reduced by the
2 amount so credited by the plan sponsor. For
3 purposes of the preceding sentence, the min-
4 imum required contribution shall be determined
5 after taking into account any waiver under sec-
6 tion 302(c).

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

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

18 “(i) the value of plan assets for the
19 preceding plan year (as reduced under
20 paragraph (4)(C)), bears to

21 “(ii) the funding target of the plan for
22 the preceding plan year (determined with-
23 out regard to subsection (i)(1)),
24 is less than 80 percent.

1 “(4) EFFECT OF BALANCES ON AMOUNTS
2 TREATED AS VALUE OF PLAN ASSETS.—In the case
3 of any plan maintaining a pre-funding 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 pre-funding balance, but only if an election
13 under paragraph (2) applying any portion of
14 the pre-funding 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 pre-funding 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 pre-funding 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 pre-funding bal-
23 ance.

24 “(5) ELECTION TO REDUCE BALANCE PRIOR TO
25 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 pre-funding 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 PRE-FUND-
15 ING BALANCE AND FUNDING STANDARD CARRY-
16 OVER BALANCE.—To the extent that any plan
17 has a funding standard carryover balance great-
18 er than zero, no election may be made under
19 subparagraph (A) with respect to the pre-fund-
20 ing balance.

21 “(6) PRE-FUNDING BALANCE.—

22 “(A) IN GENERAL.—A pre-funding 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.—As of the valuation
4 date for each plan year beginning after 2007,
5 the pre-funding balance of a plan shall be in-
6 creased by the amount elected by the plan spon-
7 sor for the plan year. Such amount shall not ex-
8 ceed the excess (if any) of—

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

12 “(ii) the minimum required contribu-
13 tion for such preceding plan year (in-
14 creased by interest on any portion of such
15 minimum required contribution remaining
16 unpaid as of the valuation date for the cur-
17 rent plan year, at the effective interest rate
18 for the plan for the preceding plan year,
19 for the period beginning with the first day
20 of such preceding plan year and ending on
21 the date that payment of such portion is
22 made).

23 “(C) DECREASES.—As of the valuation
24 date for each plan year after 2007, the pre-

1 funding balance of a plan shall be decreased
2 (but not below zero) by the sum of—

3 “(i) the amount of such balance cred-
4 ited under paragraph (2) (if any) in reduc-
5 ing the minimum required contribution of
6 the plan for the preceding plan year, and

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

9 “(7) FUNDING STANDARD CARRYOVER BAL-
10 ANCE.—

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

17 “(B) BEGINNING BALANCE.—The begin-
18 ning balance of the funding standard carryover
19 balance shall be the positive balance described
20 in paragraph (1)(B)(ii)(II).

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

1 “(i) the amount of such balance cred-
2 ited under paragraph (2) (if any) in reduc-
3 ing the minimum required contribution of
4 the plan for the preceding plan year, and
5 “(ii) any reduction in such balance
6 elected under paragraph (5).

7 “(8) ADJUSTMENTS TO BALANCES.—In deter-
8 mining the pre-funding balance or the funding
9 standard carryover balance of a plan as of the valu-
10 ation date (before applying any increase or decrease
11 under paragraph (6) or (7)), the plan sponsor shall,
12 in accordance with regulations which shall be pre-
13 scribed by the Secretary of the Treasury, adjust
14 such balance so as to reflect the rate of net gain or
15 loss (determined, notwithstanding subsection (g)(3),
16 on the basis of fair market value) experienced by all
17 plan assets for the period beginning with the valu-
18 ation date for the preceding plan year and ending
19 with the date preceding the valuation date for the
20 current plan year, properly taking into account, in
21 accordance with such regulations, all contributions,
22 distributions, and other plan payments made during
23 such period.

24 “(9) ELECTIONS.—Elections under this sub-
25 section shall be made at such times, and in such

1 form and manner, as shall be prescribed in regula-
2 tions of the Secretary of the Treasury.

3 “(g) VALUATION OF PLAN ASSETS AND LIABIL-
4 ITIES.—

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

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

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

16 “(B) EXCEPTION FOR SMALL PLANS.—If,
17 on each day during the preceding plan year, a
18 plan had 500 or fewer participants, the plan
19 may designate any day during the plan year as
20 its valuation date for such plan year and suc-
21 ceeding plan years. For purposes of this sub-
22 paragraph, all defined benefit plans which are
23 single-employer plans and are maintained by
24 the same employer (or any member of such em-
25 ployer’s controlled group) shall be treated as 1

1 plan, but only participants with respect to such
2 employer or member shall be taken into ac-
3 count.

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

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

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

18 “(3) AUTHORIZATION OF USE OF ACTUARIAL
19 VALUE.—For purposes of this section, the value of
20 plan assets shall be determined on the basis of any
21 reasonable actuarial method of valuation which takes
22 into account fair market value and which is per-
23 mitted under regulations prescribed by the Secretary
24 of the Treasury, except that—

1 “(A) any such method providing for aver-
2 aging of fair market values may not provide for
3 averaging of such values over more than the 36-
4 month period ending with the month which in-
5 cludes the valuation date, and

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

11 “(4) ACCOUNTING FOR CONTRIBUTION RE-
12 CEIPTS.—For purposes of this section—

13 “(A) CONTRIBUTIONS FOR PRIOR PLAN
14 YEARS TAKEN INTO ACCOUNT.—For purposes
15 of determining the value of plan assets for any
16 current plan year, in any case in which a con-
17 tribution properly allocable to amounts owed for
18 a preceding plan year is made on or after the
19 valuation date of the plan for such current plan
20 year, such contribution shall be taken into ac-
21 count, except that any such contribution made
22 during any such current plan year beginning
23 after 2007 shall be taken into account only in
24 an amount equal to its present value (deter-
25 mined using the effective rate of interest for the

1 plan for the preceding plan year) as of the valu-
2 ation date of the plan for such current plan
3 year.

4 “(B) CONTRIBUTIONS FOR CURRENT PLAN
5 YEAR DISREGARDED.—For purposes of deter-
6 mining the value of plan assets for any current
7 plan year, contributions which are properly allo-
8 cable to amounts owed for such plan year shall
9 not be taken into account, and, in the case of
10 any such contribution made before the valuation
11 date of the plan for such plan year, such value
12 of plan assets shall be reduced for interest on
13 such amount determined using the effective rate
14 of interest of the plan for the current plan year
15 for the period beginning when such payment
16 was made and ending on the valuation date of
17 the plan.

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

20 “(A) LIABILITIES TAKEN INTO ACCOUNT
21 FOR CURRENT PLAN YEAR.—In determining the
22 value of liabilities under a plan for a plan year,
23 liabilities shall be taken into account to the ex-
24 tent attributable to benefits (including any early

1 retirement or similar benefit) accrued or earned
2 as of the beginning of the plan year.

3 “(B) ACCRUALS DURING CURRENT PLAN
4 YEAR DISREGARDED.—For purposes of sub-
5 paragraph (A), benefits accrued or earned dur-
6 ing such plan year shall not be taken into ac-
7 count, irrespective of whether the valuation date
8 of the plan for such plan year is later than the
9 first day of such plan year.

10 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

15 “(A) each of which is reasonable (taking
16 into account the experience of the plan and rea-
17 sonable expectations), and

18 “(B) which, in combination, offer the actu-
19 ary’s best estimate of anticipated experience
20 under the plan.

21 “(2) INTEREST RATES.—

22 “(A) EFFECTIVE INTEREST RATE.—For
23 purposes of this section, the term ‘effective in-
24 terest rate’ means, with respect to any plan for
25 any plan year, the single rate of interest which,

1 if used to determine the present value of the
2 plan's liabilities referred to in subsection (d)(1),
3 would result in an amount equal to the funding
4 target of the plan for such plan year.

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

11 “(i) in the case of liabilities reason-
12 ably determined to be payable during the
13 5-year period beginning on the first day of
14 the plan year, the first segment rate with
15 respect to the applicable month,

16 “(ii) in the case of liabilities reason-
17 ably determined to be payable during the
18 15-year period beginning at the end of the
19 period described in clause (i), the second
20 segment rate with respect to the applicable
21 month, and

22 “(iii) in the case of liabilities reason-
23 ably determined to be payable after the pe-
24 riod described in clause (ii), the third seg-

1 ment rate with respect to the applicable
2 month.

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

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

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

1 “(iii) THIRD SEGMENT RATE.—The
2 term ‘third segment rate’ means, with re-
3 spect to any month, the single rate of in-
4 terest which shall be determined by the
5 Secretary of the Treasury for such month
6 on the basis of the corporate bond yield
7 curve for such month, taking into account
8 only that portion of such yield curve which
9 is based on bonds maturing during periods
10 beginning after the period described in
11 clause (ii).

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

14 “(i) IN GENERAL.—The term ‘cor-
15 porate bond yield curve’ means, with re-
16 spect to any month, a yield curve which is
17 prescribed by the Secretary of the Treas-
18 ury for such month and which reflects a 3-
19 year weighted average of yields on invest-
20 ment grade corporate bonds with varying
21 maturities.

22 “(ii) 3-YEAR WEIGHTED AVERAGE.—
23 The term ‘3-year weighted average’ means
24 an average determined by using a method-
25 ology under which the most recent year is

1 weighted 50 percent, the year preceding
2 such year is weighted 35 percent, and the
3 second year preceding such year is weight-
4 ed 15 percent.

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

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

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

7 “(G) TRANSITION RULE.—

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

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

18 “(II) the product of the rate de-
19 termined under the rules of section
20 302(b)(5)(B)(ii)(II) (as in effect for
21 plan years beginning in 2006), multi-
22 plied by a percentage equal to 100
23 percent minus the applicable percent-
24 age.

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

6 “(iii) NEW PLANS INELIGIBLE.—
7 Clause (i) shall not apply to any plan if the
8 first plan year of the plan begins after De-
9 cember 31, 2006.

10 “(3) MORTALITY TABLE.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the mortality table used in
13 determining any present value or making any
14 computation under this section shall be the
15 RP-2000 Combined Mortality Table using
16 Scale AA published by the Society of Actuaries
17 (as in effect on the date of the enactment of the
18 Pension Protection Act of 2005), projected as
19 of the plan’s valuation date.

20 “(B) SUBSTITUTE MORTALITY TABLE.—

21 “(i) IN GENERAL.—Upon request by
22 the plan sponsor and approval by the Sec-
23 retary of the Treasury for a period not to
24 exceed 10 years, a mortality table which
25 meets the requirements of clause (ii) shall

1 be used in determining any present value
2 or making any computation under this sec-
3 tion. A mortality table described in this
4 clause shall cease to be in effect if the plan
5 actuary determines at any time that such
6 table does not meet the requirements of
7 subclauses (I) and (II) of clause (ii).

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

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

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

19 “(iii) DEADLINE FOR DISPOSITION OF
20 APPLICATION.—Any mortality table sub-
21 mitted to the Secretary of the Treasury for
22 approval under this subparagraph shall be
23 treated as in effect for the succeeding plan
24 year unless such Secretary, during the
25 180-day period beginning on the date of

1 such submission, disapproves of such table
2 and provides the reasons that such table
3 fails to meet the requirements of clause
4 (ii).

5 “(C) TRANSITION RULE.—Under regula-
6 tions of the Secretary of the Treasury, any dif-
7 ference in present value resulting from the dif-
8 ference in the assumptions as set forth in the
9 mortality table specified in subparagraph (A)
10 and the assumptions as set forth in the mor-
11 tality table described in section 302(d)(7)(C)(ii)
12 (as in effect for plan years beginning in 2006)
13 shall be phased in ratably over the first period
14 of 5 plan years beginning in or after 2007 so
15 as to be fully effective for the fifth plan year.
16 The preceding sentence shall not apply to any
17 plan if the first plan year of the plan begins
18 after December 31, 2006.

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 any case in which
23 a plan is in at-risk status for a plan year, the
24 funding target of the plan for the plan year is
25 the sum of—

1 “(i) the present value of all liabilities
2 to participants and their beneficiaries
3 under the plan for the plan year, as deter-
4 mined by using, in addition to the actu-
5 arial assumptions described in subsection
6 (h), the supplemental actuarial assump-
7 tions described in subparagraph (B), plus
8 “(ii) a loading factor determined
9 under subparagraph (C).

10 “(B) SUPPLEMENTAL ACTUARIAL ASSUMP-
11 TIONS.—The actuarial assumptions used in de-
12 termining the valuation of the funding target
13 shall include, in addition to the actuarial as-
14 sumptions described in subsection (h), an as-
15 sumption that all participants will elect benefits
16 at such times and in such forms as will result
17 in the highest present value of liabilities under
18 subparagraph (A)(i).

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

22 “(i) \$700, times the number of par-
23 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 any case in which a plan is in at-risk
6 status for a plan year, the target normal cost of the
7 plan for such plan year shall be the sum of—

8 “(A) the present value of all benefits which
9 are expected to accrue or be earned under the
10 plan during the plan year, determined under
11 the actuarial assumptions used under para-
12 graph (1), plus

13 “(B) the loading factor under paragraph
14 (1)(C), excluding the portion of the loading fac-
15 tor described in paragraph (1)(C)(i).

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

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

24 “(A) IN GENERAL.—In any case in which
25 a plan which is in at-risk status for a plan year

1 has been in such status for a consecutive period
2 of fewer than 5 plan years, the applicable
3 amount of the funding target and of the target
4 normal cost shall be, in lieu of the amount de-
5 termined without regard to this paragraph, the
6 sum of—

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

10 “(ii) the transition percentage for
11 such plan year of the excess of the amount
12 determined under this subsection (without
13 regard to this paragraph) over the amount
14 determined under this section without re-
15 gard to this subsection.

16 “(B) TRANSITION PERCENTAGE.—For
17 purposes of this paragraph, the ‘transition per-
18 centage’ for a plan year is the product derived
19 by multiplying—

20 “(i) 20 percent, by

21 “(ii) the number of plan years during
22 the period described in subparagraph (A).

23 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
24 TIONS.—

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

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

12 “(3) ACCELERATED QUARTERLY CONTRIBUTION
13 SCHEDULE FOR UNDERFUNDED PLANS.—

14 “(A) INTEREST PENALTY FOR FAILURE TO
15 MEET ACCELERATED QUARTERLY PAYMENT
16 SCHEDULE.—In any case in which the plan has
17 a funding shortfall for the preceding plan year,
18 if the required installment is not paid in full,
19 then the minimum required contribution for the
20 plan year (as increased under paragraph (2))
21 shall be further increased by an amount equal
22 to the interest on the amount of the under-
23 payment for the period of the underpayment,
24 using an interest rate equal to the excess of—

1 “(i) 175 percent of the Federal mid-
2 term rate (as in effect under section 1274
3 for the 1st month of such plan year), over

4 “(ii) the effective rate of interest for
5 the plan for the plan year.

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

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

11 “(I) the required installment,
12 over

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

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

24 “(iii) ORDER OF CREDITING CON-
25 TRIBUTIONS.—For purposes of clause

1 (i)(II), contributions shall be credited
 2 against unpaid required installments in the
 3 order in which such installments are re-
 4 quired to be paid.

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

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

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

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

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

17 “(i) IN GENERAL.—The amount of
 18 any required installment shall be 25 per-
 19 cent of the required annual payment.

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

5 “(I) 90 percent of the minimum
6 required contribution (without regard
7 to any waiver under section 302(c)) to
8 the plan for the plan year under this
9 section, or

10 “(II) in the case of a plan year
11 beginning after 2007, 100 percent of
12 the minimum required contribution
13 (without regard to any waiver under
14 section 302(c)) to the plan for the
15 preceding plan year.

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

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

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

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

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

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

17 “(B) PLANS TO WHICH PARAGRAPH AP-
18 PLIES.—This paragraph shall apply to a plan
19 (other than a plan that would be described in
20 subsection (f)(2)(B) if ‘100’ were substituted
21 for ‘500’ therein) which—

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

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

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

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

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

19 “(i) LIQUIDITY SHORTFALL.—The
20 term ‘liquidity shortfall’ means, with re-
21 spect to any required installment, an
22 amount equal to the excess (as of the last
23 day of the quarter for which such install-
24 ment is made) of—

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

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

5 “(ii) BASE AMOUNT.—

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

13 “(II) SPECIAL RULE.—If the
14 amount determined under subclause
15 (I) exceeds an amount equal to 2
16 times the sum of the adjusted dis-
17 bursements from the plan for the 36
18 months ending on the last day of the
19 quarter and an enrolled actuary cer-
20 tifies to the satisfaction of the Sec-
21 retary of the Treasury that such ex-
22 cess is the result of nonrecurring cir-
23 cumstances, the base amount with re-
24 spect to such quarter shall be deter-
25 mined without regard to amounts re-

1 lated to those nonrecurring cir-
2 cumstances.

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

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

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

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

21 “(v) LIQUID ASSETS.—The term ‘liq-
22 uid assets’ means cash, marketable securi-
23 ties, and such other assets as specified by
24 the Secretary of the Treasury in regula-
25 tions.

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

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

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

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

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

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

24 then there shall be a lien in favor of the plan in the
25 amount determined under paragraph (3) upon all

1 property and rights to property, whether real or per-
2 sonal, belonging to such person and any other per-
3 son who is a member of the same controlled group
4 of which such person is a member.

5 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
6 This subsection shall apply to a single-employer plan
7 for any plan year for which the funding target at-
8 tainment percentage (as defined in subsection
9 (d)(2)) of such plan is less than 100 percent. This
10 subsection shall not apply to any plan to which sec-
11 tion 4021 does not apply (as such section is in effect
12 on the date of the enactment of the Pension Protec-
13 tion Act of 2005).

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

20 “(4) NOTICE OF FAILURE; LIEN.—

21 “(A) NOTICE OF FAILURE.—A person
22 committing a failure described in paragraph (1)
23 shall notify the Pension Benefit Guaranty Cor-
24 poration of such failure within 10 days of the
25 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
2 subsection—

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 (i).

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 2006.

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

10 (a) PROHIBITION OF SHUTDOWN BENEFITS AND
11 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS
12 UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the
13 Employee Retirement Income Security Act of 1974 (29
14 U.S.C. 1056) is amended by adding at the end the fol-
15 lowing new subsection:

16 “(g) FUNDING-BASED LIMITATION ON SHUTDOWN
17 BENEFITS AND OTHER UNPREDICTABLE CONTINGENT
18 EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

19 “(1) IN GENERAL.—No defined benefit plan
20 which is a single-employer plan may provide benefits
21 to which participants are entitled solely by reason of
22 the occurrence of a plant shutdown or any other un-
23 predictable contingent event occurring during any
24 plan year if the funding target attainment percent-

1 age as of the valuation date of the plan for such
2 plan year—

3 “(A) is less than 80 percent, or

4 “(B) would be less than 80 percent taking
5 into account such occurrence.

6 “(2) EXEMPTION.—Paragraph (1) shall cease
7 to apply with respect to any plan year, effective as
8 of the first date of the plan year, upon payment by
9 the plan sponsor of a contribution (in addition to
10 any minimum required contribution under section
11 303) equal to—

12 “(A) in the case of paragraph (1)(A), the
13 amount of the increase in the funding target of
14 the plan (under section 303) for the plan year
15 attributable to the occurrence referred to in
16 paragraph (1), and

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

20 Rules similar to the rules of subsection (h)(6) shall
21 apply for purposes of this paragraph.

22 “(3) UNPREDICTABLE CONTINGENT EVENT.—
23 For purposes of this subsection, the term ‘unpredict-
24 able contingent event’ means an event other than—

1 “(A) attainment of any age, performance
2 of any service, receipt or derivation of any com-
3 pensation, or the occurrence of death or dis-
4 ability, or

5 “(B) an event which is reasonably and reli-
6 ably predictable (as determined by the Sec-
7 retary of the Treasury).

8 “(4) NEW PLANS.—Paragraph (1) shall not
9 apply to a plan for the first 5 plan years of the plan.
10 For purposes of this subsection, the reference in this
11 subsection to a plan shall include a reference to any
12 predecessor plan.

13 “(5) DEEMED REDUCTION OF FUNDING BAL-
14 ANCES.—A rule similar to the rule of subsection
15 (h)(8) shall apply for purposes of this subsection.”.

16 (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-
17 CRUALS.—

18 (1) IN GENERAL.—Section 206 of such Act (as
19 amended by subsection (a)) is amended further by
20 adding at the end the following new subsection:

21 “(h) FUNDING-BASED LIMITS ON BENEFITS AND
22 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER
23 PLANS.—

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

1 “(A) IN GENERAL.—No amendment to a
2 defined benefit plan which is a single-employer
3 plan which has the effect of increasing liabilities
4 of the plan by reason of increases in benefits,
5 establishment of new benefits, changing the
6 rate of benefit accrual, or changing the rate at
7 which benefits become nonforfeitable to the plan
8 may take effect during any plan year if the
9 funding target attainment percentage as of the
10 valuation date of the plan for such plan year
11 is—

12 “(i) less than 80 percent, or
13 “(ii) would be less than 80 percent
14 taking into account such amendment.

15 For purposes of this subparagraph, any in-
16 crease in benefits under the plan by reason of
17 an increase in the benefit rate provided under
18 the plan or on the basis of an increase in com-
19 pensation shall be treated as effected by plan
20 amendment.

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

1 of a contribution (in addition to any minimum
2 required contribution under section 303) equal
3 to—

4 “(i) in the case of subparagraph
5 (A)(i), the amount of the increase in the
6 funding target of the plan (under section
7 303) for the plan year attributable to the
8 amendment, and

9 “(ii) in the case of subparagraph
10 (A)(ii), the amount sufficient to result in a
11 funding target attainment percentage of 80
12 percent.

13 “(2) FUNDING-BASED LIMITATION ON CERTAIN
14 FORMS OF DISTRIBUTION.—

15 “(A) IN GENERAL.—A defined benefit plan
16 which is a single-employer plan shall provide
17 that, in any case in which the plan’s funding
18 target attainment percentage as of the valu-
19 ation date of the plan for a plan year is less
20 than 80 percent, the plan may not after such
21 date pay any prohibited payment (as defined in
22 section 206(e)).

23 “(B) EXCEPTION.—Subparagraph (A)
24 shall not apply to any plan for any plan year
25 if the terms of such plan (as in effect for the

1 period beginning on June 29, 2005, and ending
2 with such plan year) provide for no benefit ac-
3 cruals with respect to any participant during
4 such period.

5 “(3) LIMITATIONS ON BENEFIT ACCRUALS FOR
6 PLANS WITH SEVERE FUNDING SHORTFALLS.—A de-
7 fined benefit plan which is a single-employer plan
8 shall provide that, in any case in which the plan’s
9 funding target attainment percentage as of the valu-
10 ation date of the plan for a plan year is less than
11 60 percent, all future benefit accruals under the
12 plan shall cease as of such date.

13 “(4) NEW PLANS.—Paragraphs (1) and (3)
14 shall not apply to a plan for the first 5 plan years
15 of the plan. For purposes of this subsection, the ref-
16 erence in this subsection to a plan shall include a
17 reference to any predecessor plan.

18 “(5) PRESUMED UNDERFUNDING FOR PUR-
19 POSES OF BENEFIT LIMITATIONS BASED ON PRIOR
20 YEAR’S FUNDING STATUS.—

21 “(A) PRESUMPTION OF CONTINUED
22 UNDERFUNDING.—In any case in which a ben-
23 efit limitation under paragraph (1), (2), or (3)
24 has been applied to a plan with respect to the
25 plan year preceding the current plan year, the

1 funding target attainment percentage of the
2 plan as of the valuation date of the plan for the
3 current plan year shall be presumed to be equal
4 to the funding target attainment percentage of
5 the plan as of the valuation date of the plan for
6 the preceding plan year until the enrolled actu-
7 ary of the plan certifies the actual funding tar-
8 get attainment percentage of the plan as of the
9 valuation date of the plan for the current plan
10 year.

11 “(B) PRESUMPTION OF UNDERFUNDING
12 AFTER 10TH MONTH.—In any case in which no
13 such certification is made with respect to the
14 plan before the first day of the 10th month of
15 the current plan year, for purposes of para-
16 graphs (1), (2), and (3), the plan’s funding tar-
17 get attainment percentage shall be conclusively
18 presumed to be less than 60 percent as of the
19 first day of such 10th month, and such day
20 shall be deemed, for purposes of such sub-
21 sections, to be the valuation date of the plan for
22 the current plan year.

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

1 “(i) a benefit limitation under para-
2 graph (1), (2), or (3) did not apply to a
3 plan with respect to the plan year pre-
4 ceding the current plan year, but the fund-
5 ing target attainment percentage of the
6 plan for such preceding plan year was not
7 more than 10 percentage points greater
8 than the percentage which would have
9 caused such subsection to apply to the plan
10 with respect to such preceding plan year,
11 and

12 “(ii) as of the first day of the 4th
13 month of the current plan year, the en-
14 rolled actuary of the plan has not certified
15 the actual funding target attainment per-
16 centage of the plan as of the valuation date
17 of the plan for the current plan year,
18 until the enrolled actuary so certifies, such first
19 day shall be deemed, for purposes of such sub-
20 section, to be the valuation date of the plan for
21 the current plan year and the funding target at-
22 tainment percentage of the plan as of such first
23 day shall, for purposes of such paragraph, be
24 presumed to be equal to 10 percentage points
25 less than the funding target attainment per-

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

3 “(6) RESTORATION BY PLAN AMENDMENT OF
4 BENEFITS OR BENEFIT ACCRUAL.—In any case in
5 which a prohibition under paragraph (2) of a pay-
6 ment described in paragraph (2)(A) or a cessation of
7 benefit accruals under paragraph (3) is applied to a
8 plan with respect to any plan year and such prohibi-
9 tion or cessation, as the case may be, ceases to apply
10 to any subsequent plan year, the plan may provide
11 for the resumption of such benefit payment or such
12 benefit accrual only by means of the adoption of a
13 plan amendment after the valuation date of the plan
14 for such subsequent plan year. The preceding sen-
15 tence shall not apply to a prohibition or cessation re-
16 quired by reason of paragraph (5).

17 “(7) FUNDING TARGET ATTAINMENT PERCENT-
18 AGE.—

19 “(A) IN GENERAL.—For purposes of this
20 subsection, the term ‘funding target attainment
21 percentage’ means, with respect to any plan for
22 any plan year, the ratio (expressed as a per-
23 centage) which—

24 “(i) the value of plan assets for the
25 plan year (as determined under section

1 303(g)) reduced by the pre-funding bal-
2 ance and the funding standard carryover
3 balance (within the meaning of section
4 303(f)), bears to

5 “(ii) the funding target of the plan for
6 the plan year (as determined under section
7 303(d)(1), but without regard to section
8 303(i)(1)).

9 “(B) APPLICATION TO PLANS WHICH ARE
10 FULLY FUNDED WITHOUT REGARD TO REDUC-
11 TIONS FOR FUNDING BALANCES.—

12 “(i) IN GENERAL.—In the case of a
13 plan for any plan year, if the funding tar-
14 get attainment percentage is 100 percent
15 or more (determined without regard to this
16 subparagraph and without regard to the
17 reduction under subparagraph (A)(i) for
18 the pre-funding balance and the funding
19 standard carryover balance), subparagraph
20 (A) shall be applied without regard to such
21 reduction.

22 “(ii) TRANSITION RULE.—Clause (i)
23 shall be applied to plan years beginning
24 after 2006 and before 2011 by substituting
25 for ‘100 percent’ the applicable percentage

1 determined in accordance with the fol-
2 lowing table:

“In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2007	92 percent
2008	94 percent
2009	96 percent
2010	98 percent.

3 “(iii) LIMITATION.—Clause (ii) shall
4 not apply with respect to any plan year
5 after 2007 unless the funding target at-
6 tainment percentage (determined without
7 regard to this subparagraph and without
8 regard to the reduction under subpara-
9 graph (A)(i) for the pre-funding balance
10 and the funding standard carryover bal-
11 ance) of the plan for each preceding plan
12 year after 2006 was not less than the ap-
13 plicable percentage with respect to such
14 preceding plan year determined under
15 clause (ii).

16 “(8) DEEMED REDUCTION OF FUNDING BAL-
17 ANCES.—In the case of a plan maintained pursuant
18 to 1 or more collective bargaining agreements be-
19 tween employee representatives and 1 or more
20 employers—

1 “(A) IN GENERAL.—In any case in which
2 a benefit limitation under paragraph (1), (2), or
3 (3) would (but for this paragraph and deter-
4 mined without regard to paragraph (1)(B))
5 apply to such plan for the plan year, the plan
6 sponsor of such plan shall be treated for pur-
7 poses of this Act as having made an election
8 under section 303(f)(5) to reduce the balance of
9 the pre-funding balance and the funding stand-
10 ard carryover balance for the plan year (in a
11 manner consistent with the requirements of sec-
12 tion 303(f)(5)(B)) by such amount as is nec-
13 essary for such benefit limitation to not apply
14 to the plan for such plan year.

15 “(B) EXCEPTION FOR INSUFFICIENT
16 FUNDING BALANCES.—Subparagraph (A) shall
17 not apply with respect to a benefit limitation
18 for any plan year if the application of subpara-
19 graph (A) would not result in the benefit limita-
20 tion not applying for such plan year.”.

21 (2) NOTICE REQUIREMENT.—

22 (A) IN GENERAL.—Section 101 of such
23 Act (29 U.S.C. 1021) is amended—

24 (i) by redesignating subsection (j) as
25 subsection (k); and

1 (ii) by inserting after subsection (i)
2 the following new subsection:

3 “(j) NOTICE OF FUNDING-BASED LIMITATION ON
4 CERTAIN FORMS OF DISTRIBUTION.—The plan adminis-
5 trator of a defined benefit plan which is a single-employer
6 plan shall provide a written notice to plan participants and
7 beneficiaries within 30 days after the plan has become
8 subject to the restriction described in section 206(h)(2)
9 or at such other time as may be determined by the Sec-
10 retary.”.

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

15 (c) EFFECTIVE DATE.—

16 (1) SHUTDOWN BENEFITS.—Except as provided
17 in paragraph (3), the amendments made by sub-
18 section (a) shall apply with respect to plant shut-
19 downs, or other unpredictable contingent events, oc-
20 ccurring after 2006.

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

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

8 (A) the later of—

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

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

19 (B) January 1, 2009.

20 For purposes of clause (i), any plan amendment
21 made pursuant to a collective bargaining agreement
22 relating to the plan which amends the plan solely to
23 conform to any requirement added by this subsection
24 shall not be treated as a termination of such collec-
25 tive bargaining agreement.

1 (d) SPECIAL RULE FOR 2007.—For purposes of ap-
2 plying paragraph (5) of section 206(h) of such Act (as
3 added by this section) to current plan years (within the
4 meaning of such paragraph) beginning in 2007, the modi-
5 fied funded current liability percentage of the plan for the
6 preceding year shall be substituted for the funding target
7 attainment percentage of the plan for the preceding year.
8 For purposes of the preceding sentence, the term “modi-
9 fied funded current liability percentage” means the funded
10 current liability percentage (as defined in section 302(l)(8)
11 of such Act), reduced as described in subparagraph (E)
12 thereof in the case of a plan with a funded current liability
13 percentage (as so defined and before such reduction)
14 which is less than 100 percent.

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

16 (a) MISCELLANEOUS AMENDMENTS TO TITLE I.—
17 Subtitle B of title I of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C. 1021 et seq.) is
19 amended—

20 (1) in section 101(d)(3), by striking “section
21 302(e)” and inserting “section 303(j)”;

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

24 “(i) a statement as to whether—

1 “(I) in the case of a defined ben-
2 efit plan which is a single-employer
3 plan, the plan’s funding target attain-
4 ment percentage (as defined in section
5 303(d)(2)), or

6 “(II) in the case of a defined
7 benefit plan which is a multiemployer
8 plan, the plan’s funded percentage (as
9 defined in section 305(d)(2)),
10 is at least 100 percent (and, if not, the ac-
11 tual percentage);”;

12 (3) in section 103(d)(8)(B), by striking “the re-
13 quirements of section 302(c)(3)” and inserting “the
14 applicable requirements of sections 303(h) and
15 304(c)(3)”;

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

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

20 “(A) in the case of a defined benefit plan
21 which is a single-employer plan, the funding
22 target (as defined in section 303(d)(1)) of the
23 plan, or

24 “(B) in the case of a defined benefit plan
25 which is a multiemployer plan, the current li-

1 ability (as defined in section 304(c)(6)(D))
2 under the plan,
3 the percentage which such value is of the amount
4 described in subparagraph (A) or (B).”;

5 (5) in section 203(a)(3)(C), by striking “section
6 302(c)(8)” and inserting “section 302(d)(2)”;

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

9 (7) in section 204(i)(2)(B), by striking “section
10 302(c)(8)” and inserting “section 302(d)(2)”;

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

16 (9) in section 204(i)(4), by striking “section
17 302(c)(11)(A), without regard to section
18 302(c)(11)(B)” and inserting “section 302(b)(1),
19 without regard to section 302(b)(2)”;

20 (10) in section 206(e)(1), by striking “section
21 302(d)” and inserting “section 303(j)(4)”, and by
22 striking “section 302(e)(5)” and inserting “section
23 303(j)(4)(E)(i)”;

24 (11) in section 206(e)(3), by striking “section
25 302(e) by reason of paragraph (5)(A) thereof” and

1 inserting “section 303(j)(3) by reason of section
2 303(j)(4)(A)”;

3 (12) in sections 101(e)(3), 403(c)(1), and
4 408(b)(13), by striking “American Jobs Creation
5 Act of 2004” and inserting “Pension Protection Act
6 of 2005”.

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

9 (1) in section 4001(a)(13) (29 U.S.C.
10 1301(a)(13)), by striking “302(c)(11)(A)” and in-
11 sserting “302(b)(1)”, by striking “412(c)(11)(A)”
12 and inserting “412(b)(1)”, by striking
13 “302(e)(11)(B)” and inserting “302(b)(2)”, and by
14 striking “412(c)(11)(B)” and inserting “412(b)(2)”;

15 (2) in section 4003(e)(1) (29 U.S.C.
16 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and
17 inserting “303(k)(1)(A) and (B)”, and by striking
18 “412(n)(1)(A) and (B)” and inserting
19 “430(k)(1)(A) and (B)”;

20 (3) in section 4010(b)(2) (29 U.S.C.
21 1310(b)(2)), by striking “302(f)(1)(A) and (B)” and
22 inserting “303(k)(1)(A) and (B)”, and by striking
23 “412(n)(1)(A) and (B)” and inserting
24 “430(k)(1)(A) and (B)”;

1 (4) in section 4011(b) (29 U.S.C. 1311(b)), by
2 striking “to which” and all that follows and insert-
3 ing “for any plan year for which the plan’s funding
4 target attainment percentage (as defined in section
5 303(d)(2)) is at least 90 percent.”;

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

9 “(1)(A) in the case of a single-employer plan,
10 the sum of the shortfall amortization charge (within
11 the meaning of section 303(c)(1) of this Act and
12 430(c)(1) of the Internal Revenue Code of 1986)
13 with respect to the plan (if any) for the plan year
14 in which the termination date occurs, plus the aggre-
15 gate total of shortfall amortization installments (if
16 any) determined for succeeding plan years under
17 section 303(c)(2) of this Act and section 430(c)(2)
18 of such Code (which, for purposes of this subpara-
19 graph, shall include any increase in such sum which
20 would result if all applications for waivers of the
21 minimum funding standard under section 302(c) of
22 this Act and section 412(c) of such Code which are
23 pending with respect to such plan were denied and
24 if no additional contributions (other than those al-
25 ready made by the termination date) were made for

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

3 “(B) in the case of a multiemployer plan, the
4 outstanding balance of the accumulated funding de-
5 ficiencies (within the meaning of section 304(a)(2)
6 of this Act and section 431(a) of the Internal Rev-
7 enue Code of 1986) of the plan (if any) (which, for
8 purposes of this subparagraph, shall include the
9 amount of any increase in such accumulated funding
10 deficiencies of the plan which would result if all
11 pending applications for waivers of the minimum
12 funding standard under section 302(c) of this Act or
13 section 412(c) of such Code and for extensions of
14 the amortization period under section 304(d) of this
15 Act or section 431(d) of such Code with respect to
16 such plan were denied and if no additional contribu-
17 tions (other than those already made by the termi-
18 nation date) were made for the plan year in which
19 the termination date occurs or for any previous plan
20 year),

21 “(2)(A) in the case of a single-employer plan,
22 the sum of the waiver amortization charge (within
23 the meaning of section 303(e)(1) of this Act and
24 430(j)(2) of the Internal Revenue Code of 1986)
25 with respect to the plan (if any) for the plan year

1 in which the termination date occurs, plus the aggregate
2 total of waiver amortization installments (if
3 any) determined for succeeding plan years under
4 section 303(e)(2) of this Act and section 430(j)(3)
5 of such Code, or

6 “(B) in the case of a multiemployer plan, the
7 outstanding balance of the amount of waived fund-
8 ing deficiencies of the plan waived before such date
9 under section 302(c) of this Act or section 412(c) of
10 such Code (if any), and

11 “(3) in the case of a multiemployer plan, the
12 outstanding balance of the amount of decreases in
13 the minimum funding standard allowed before such
14 date under section 304(d) of this Act or section
15 431(d) of such Code (if any);”;

16 (6) in section 4071 (29 U.S.C. 1371), by striking
17 “302(f)(4)” and inserting “303(k)(4)”;

18 (7) in section 4243(a)(1)(B) (29 U.S.C.
19 1423(a)(1)(B)), by striking “302(a)” and inserting
20 “304(a)”, and, in clause (i), by striking “302(a)”
21 and inserting “304(a)”;

22 (8) in section 4243(f)(1) (29 U.S.C.
23 1423(f)(1)), by striking “303(a)” and inserting
24 “302(c)”;

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

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

6 (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4
7 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.
8 4 of 1978 (ratified and affirmed as law by Public Law
9 98–532 (98 Stat. 2705)) is amended by striking
10 “302(c)(8)” and inserting “302(d)(2)”, by striking
11 “304(a) and (b)(2)(A)” and inserting “304(d)(1), (d)(2),
12 and (e)(2)(A)”, and by striking “412(c)(8), (e), and
13 (f)(2)(A)” and inserting “412(d)(2) and 431(d)(1), (d)(2),
14 and (e)(2)(A)”.

15 (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-
16 PORARY VARIANCES.—

17 (1) IN GENERAL.—Section 207 of such Act (29
18 U.S.C. 1057) is repealed.

19 (2) CONFORMING AMENDMENT.—The table of
20 contents in section 1 of such Act is amended by
21 striking the item relating to section 207.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plan years beginning after 2006.

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

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

4 (a) NEW MINIMUM FUNDING STANDARDS.—Section
5 412 of the Internal Revenue Code of 1986 (relating to
6 minimum funding standards) is amended to read as fol-
7 lows:

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

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

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

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

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

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

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

13 “(b) LIABILITY FOR CONTRIBUTIONS.—

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

20 “(2) JOINT AND SEVERAL LIABILITY WHERE
21 EMPLOYER MEMBER OF CONTROLLED GROUP.—In
22 the case of a defined benefit plan which is not a
23 multiemployer plan, if the employer referred to in
24 paragraph (1) is a member of a controlled group,

1 each member of such group shall be jointly and sev-
2 erally liable for payment of such contributions.

3 “(c) VARIANCE FROM MINIMUM FUNDING STAND-
4 ARDS.—

5 “(1) WAIVER IN CASE OF BUSINESS HARD-
6 SHIP.—

7 “(A) IN GENERAL.—If—

8 “(i) an employer is (or in the case of
9 a multiemployer plan, 10 percent or more
10 of the number of employers contributing to
11 or under the plan is) unable to satisfy the
12 minimum funding standard for a plan year
13 without temporary substantial business
14 hardship (substantial business hardship in
15 the case of a multiemployer plan), and

16 “(ii) application of the standard would
17 be adverse to the interests of plan partici-
18 pants in the aggregate,

19 the Secretary may, subject to subparagraph
20 (C), waive the requirements of subsection (a)
21 for such year with respect to all or any portion
22 of the minimum funding standard. The Sec-
23 retary shall not waive the minimum funding
24 standard with respect to a plan for more than

1 3 of any 15 (5 of any 15 in the case of a multi-
2 employer plan) consecutive plan years.

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

6 “(i) in the case of a defined benefit
7 plan which is not a multiemployer plan,
8 the minimum required contribution under
9 section 430 for the plan year shall be re-
10 duced by the amount of the waived funding
11 deficiency and such amount shall be amor-
12 tized as required under section 430(e), and

13 “(ii) in the case of a multiemployer
14 plan, the funding standard account shall
15 be credited under section 431(b)(3)(C)
16 with the amount of the waived funding de-
17 ficiency and such amount shall be amor-
18 tized as required under section
19 431(b)(2)(C).

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

1 waived funding deficiency for any preceding
2 plan year.

3 “(2) DETERMINATION OF BUSINESS HARD-
4 SHIP.—For purposes of this subsection, the factors
5 taken into account in determining temporary sub-
6 stantial business hardship (substantial business
7 hardship in the case of a multiemployer plan) shall
8 include (but shall not be limited to) whether or
9 not—

10 “(A) the employer is operating at an eco-
11 nomic loss,

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

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

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

20 “(3) WAIVED FUNDING DEFICIENCY.—For pur-
21 poses of this section and part III of this subchapter,
22 the term ‘waived funding deficiency’ means the por-
23 tion of the minimum funding standard under sub-
24 section (a) (determined without regard to the waiv-

1 er) for a plan year waived by the Secretary and not
2 satisfied by employer contributions.

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

5 “(A) SECURITY MAY BE REQUIRED.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in subparagraph (C), the Secretary
8 may require an employer maintaining a de-
9 fined benefit plan which is a single-em-
10 ployer plan (within the meaning of section
11 4001(a)(15) of the Employee Retirement
12 Income Security Act of 1974) to provide
13 security to such plan as a condition for
14 granting or modifying a waiver under
15 paragraph (1).

16 “(ii) SPECIAL RULES.—Any security
17 provided under clause (i) may be perfected
18 and enforced only by the Pension Benefit
19 Guaranty Corporation, or at the direction
20 of the Corporation, by a contributing spon-
21 sor (within the meaning of section
22 4001(a)(13) of the Employee Retirement
23 Income Security Act of 1974), or a mem-
24 ber of such sponsor’s controlled group

1 (within the meaning of section 4001(a)(14)
2 of such Act).

3 “(B) CONSULTATION WITH THE PENSION
4 BENEFIT GUARANTY CORPORATION.—Except as
5 provided in subparagraph (C), the Secretary
6 shall, before granting or modifying a waiver
7 under this subsection with respect to a plan de-
8 scribed in subparagraph (A)(i)—

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

11 “(I) notice of the completed ap-
12 plication for any waiver or modifica-
13 tion, and

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

17 “(ii) consider—

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

20 “(II) any views of any employee
21 organization (within the meaning of
22 section 3(4) of the Employee Retirement
23 Income Security Act of 1974)
24 representing participants in the plan
25 which are submitted in writing to the

1 Secretary in connection with such ap-
2 plication.

3 Information provided to the Corporation under
4 this subparagraph shall be considered tax re-
5 turn information and subject to the safe-
6 guarding and reporting requirements of section
7 6103(p).

8 “(C) EXCEPTION FOR CERTAIN WAIV-
9 ERS.—

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

14 “(I) the aggregate unpaid min-
15 imum required contribution (within
16 the meaning of section 4971(c)(4)) for
17 the plan year and all preceding plan
18 years, and

19 “(II) the present value of all
20 waiver amortization installments de-
21 termined for the plan year and suc-
22 ceeding plan years under section
23 430(e)(2),

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

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

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

11 “(A) APPLICATION MUST BE SUBMITTED
12 BEFORE DATE 2½ MONTHS AFTER CLOSE OF
13 YEAR.—In the case of a defined benefit plan
14 which is not a multiemployer plan, no waiver
15 may be granted under this subsection with re-
16 spect to any plan for any plan year unless an
17 application therefor is submitted to the Sec-
18 retary not later than the 15th day of the 3rd
19 month beginning after the close of such plan
20 year.

21 “(B) SPECIAL RULE IF EMPLOYER IS MEM-
22 BER OF CONTROLLED GROUP.—In the case of a
23 defined benefit plan which is not a multiem-
24 ployer plan, if an employer is a member of a
25 controlled group, the temporary substantial

1 business hardship requirements of paragraph
2 (1) shall be treated as met only if such require-
3 ments are met—

4 “(i) with respect to such employer,
5 and

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

10 The Secretary may provide that an analysis of
11 a trade or business or industry of a member
12 need not be conducted if the Secretary deter-
13 mines such analysis is not necessary because
14 the taking into account of such member would
15 not significantly affect the determination under
16 this paragraph.

17 “(6) ADVANCE NOTICE.—

18 “(A) IN GENERAL.—The Secretary shall,
19 before granting a waiver under this subsection,
20 require each applicant to provide evidence satis-
21 factory to the Secretary that the applicant has
22 provided notice of the filing of the application
23 for such waiver to to each affected party (as de-
24 fined in section 4001(a)(21) of the Employee
25 Retirement Income Security Act of 1974). Such

1 notice shall include a description of the extent
2 to which the plan is funded for benefits which
3 are guaranteed under title IV of the Employee
4 Retirement Income Security Act of 1974 and
5 for benefit liabilities.

6 “(B) CONSIDERATION OF RELEVANT IN-
7 FORMATION.—The Secretary shall consider any
8 relevant information provided by a person to
9 whom notice was given under subparagraph
10 (A).

11 “(7) RESTRICTION ON PLAN AMENDMENTS.—

12 “(A) IN GENERAL.—No amendment of a
13 plan which increases the liabilities of the plan
14 by reason of any increase in benefits, any
15 change in the accrual of benefits, or any change
16 in the rate at which benefits become nonforfeit-
17 able under the plan shall be adopted if a waiver
18 under this subsection or an extension of time
19 under section 431(d) is in effect with respect to
20 the plan, or if a plan amendment described in
21 subsection (d)(2) has been made at any time in
22 the preceding 12 months (24 months in the
23 case of a multiemployer plan). If a plan is
24 amended in violation of the preceding sentence,
25 any such waiver, or extension of time, shall not

1 apply to any plan year ending on or after the
2 date on which such amendment is adopted.

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

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

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

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

14 “(d) MISCELLANEOUS RULES.—

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

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

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

1 tiemployer plan, no later than 2 years after the
2 close of such plan year),

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

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

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

1 multiemployer plan, any extension of the amortiza-
2 tion period under section 431(d)) is unavailable or
3 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.

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

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

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

15 “(B) such plan satisfied (or was deter-
16 mined by the Secretary to have satisfied) the
17 requirements of section 403(a).

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

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

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

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

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

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

8 “(F) any plan established and maintained
9 by a society, order, or association described in
10 section 501(e)(8) or (9), if no part of the con-
11 tributions to or under such plan are made by
12 employers of participants in such plan.

13 No plan described in subparagraph (C), (D), or (F)
14 shall be treated as a qualified plan for purposes of
15 section 401(a) unless such plan meets the require-
16 ments of section 401(a)(7) as in effect on September
17 1, 1974.

18 “(3) CERTAIN INSURANCE CONTRACT PLANS.—

19 A plan is described in this paragraph if—

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

22 “(B) such contracts provide for level an-
23 nual premium payments to be paid extending
24 not later than the retirement age for each indi-
25 vidual participating in the plan, and com-

1 mencing with the date the individual became a
2 participant in the plan (or, in the case of an in-
3 crease in benefits, commencing at the time such
4 increase becomes effective),

5 “(C) benefits provided by the plan are
6 equal to the benefits provided under each con-
7 tract at normal retirement age under the plan
8 and are guaranteed by an insurance carrier (li-
9 censed under the laws of a State to do business
10 with the plan) to the extent premiums have
11 been paid,

12 “(D) premiums payable for the plan year,
13 and all prior plan years, under such contracts
14 have been paid before lapse or there is rein-
15 statement of the policy,

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

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

21 A plan funded exclusively by the purchase of group
22 insurance contracts which is determined under regu-
23 lations prescribed by the Secretary to have the same
24 characteristics as contracts described in the pre-

1 ceding sentence shall be treated as a plan described
2 in this paragraph.”.

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

6 **SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DE-**
7 **FINED BENEFIT PENSION PLANS.**

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

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

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

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

23 “(1) in any case in which the value of plan as-
24 sets of the plan (as reduced under subsection

1 (f)(4)(B)) is less than the funding target of the plan
2 for the plan year, the sum of—

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

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

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

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

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

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

1 of any increase in compensation during the current plan
2 year, the increase in such benefit shall be treated as hav-
3 ing accrued during the current plan year.

4 “(c) SHORTFALL AMORTIZATION CHARGE.—

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

11 “(2) SHORTFALL AMORTIZATION INSTALL-
12 MENT.—The plan sponsor shall determine, with re-
13 spect to the shortfall amortization base of the plan
14 for any plan year, the amounts necessary to amor-
15 tize such shortfall amortization base, in level annual
16 installments over a period of 7 plan years beginning
17 with such plan year. For purposes of paragraph (1),
18 the annual installment of such amortization for each
19 plan year in such 7-plan-year period is the shortfall
20 amortization installment for such plan year with re-
21 spect to such shortfall amortization base. In deter-
22 mining any shortfall amortization installment under
23 this paragraph, the plan sponsor shall use the seg-
24 ment rates determined under subparagraph (C) of

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

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

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

9 “(B) the sum of—

10 “(i) the present value (determined
11 using the segment rates determined under
12 subparagraph (C) of subsection (h)(2), ap-
13 plied under rules similar to the rules of
14 subparagraph (B) of subsection (h)(2)) of
15 the aggregate total of the shortfall amorti-
16 zation installments, for such plan year and
17 the 5 succeeding plan years, which have
18 been determined with respect to the short-
19 fall amortization bases of the plan for each
20 of the 6 plan years preceding such plan
21 year, and

22 “(ii) the present value (as so deter-
23 mined) of the aggregate total of the waiver
24 amortization installments for such plan
25 year and the 5 succeeding plan years,

1 which have been determined with respect
2 to the waiver amortization bases of the
3 plan for each of the 5 plan years 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.—In the case of a
24 non-deficit reduction plan, subparagraph
25 (A) shall be applied to plan years begin-

1 ning after 2006 and before 2011 by sub-
 2 stituting, for the funding target of the plan
 3 for the plan year, the applicable percentage
 4 of such funding target determined under
 5 the following table:

“In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2007	92 percent
2008	94 percent
2009	96 percent
2010	98 percent.

6 “(ii) LIMITATION.—Clause (i) shall
 7 not apply with respect to any plan year
 8 after 2007 unless the ratio (expressed as a
 9 percentage) which—

10 “(I) the value of plan assets for
 11 each preceding plan year after 2006
 12 (as reduced under subsection
 13 (f)(4)(A)), bears to

14 “(II) the funding target of the
 15 plan for such preceding plan year (de-
 16 termined without regard to subsection
 17 (i)(1)),

18 is not less than the applicable percentage
 19 with respect to such preceding plan deter-
 20 mined under clause (i).

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

5 “(I) to which this part (as in ef-
6 fect on the day before the date of the
7 enactment of the Pension Protection
8 Act of 2005) applied for the plan year
9 beginning in 2006, and

10 “(II) to which section 412(d) (as
11 so in effect) did not apply for such
12 plan year.

13 “(6) 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 shortfall am-
17 ortization charge for such plan year and succeeding
18 plan years, the shortfall amortization bases for all
19 preceding plan years (and all shortfall amortization
20 installments determined with respect to such bases)
21 shall be reduced to zero.

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

24 “(1) FUNDING TARGET.—Except as provided in
25 subsection (i)(1) with respect to plans in at-risk sta-

1 tus, the funding target of a plan for a plan year is
2 the present value of all liabilities to participants and
3 their beneficiaries under the plan for the plan year.

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

8 “(A) the value of plan assets for the plan
9 year (as reduced under subsection (f)(4)(B)),
10 bears to

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

14 “(e) WAIVER AMORTIZATION CHARGE.—

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

21 “(2) WAIVER AMORTIZATION INSTALLMENT.—
22 The plan sponsor shall determine, with respect to
23 the waiver amortization base of the plan for any
24 plan year, the amounts necessary to amortize such
25 waiver amortization base, in level annual install-

1 ments over a period of 5 plan years beginning with
2 the succeeding plan year. For purposes of paragraph
3 (1), the annual installment of such amortization for
4 each plan year in such 5-plan year period is the
5 waiver amortization installment for such plan year
6 with respect to such waiver amortization base.

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

13 “(4) WAIVER AMORTIZATION BASE.—The wai-
14 ver amortization base of a plan for a plan year is the
15 amount of the waived funding deficiency (if any) for
16 such plan year under section 412(c).

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

1 “(f) REDUCTION OF MINIMUM REQUIRED CONTRIBU-
2 TION BY PRE-FUNDING BALANCE AND FUNDING STAND-
3 ARD CARRYOVER BALANCE.—

4 “(1) ELECTION TO MAINTAIN BALANCES.—

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

9 “(B) FUNDING STANDARD CARRYOVER
10 BALANCE.—

11 “(i) IN GENERAL.—In the case of a
12 defined benefit plan (other than a multiem-
13 ployer plan) described in clause (ii), the
14 plan sponsor may elect to maintain a fund-
15 ing standard carryover balance, until such
16 balance is reduced to zero.

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

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

22 “(II) had a positive balance in
23 the funding standard account under
24 section 412(b) as in effect for such

1 plan year and determined as of the
2 end of such plan year.

3 “(2) APPLICATION OF BALANCES.—A pre-fund-
4 ing balance and a funding standard carryover bal-
5 ance maintained pursuant to this paragraph—

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

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

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

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

17 “(A) IN GENERAL.—Except as provided in
18 subparagraphs (B) and (C), in the case of any
19 plan year in which the plan sponsor elects to
20 credit against the minimum required contribu-
21 tion for the current plan year all or a portion
22 of the pre-funding balance or the funding
23 standard carryover balance for the current plan
24 year (not in excess of such minimum required
25 contribution), the minimum required contribu-

1 tion for the plan year shall be reduced by the
2 amount so credited by the plan sponsor. For
3 purposes of the preceding sentence, the min-
4 imum required contribution shall be determined
5 after taking into account any waiver under sec-
6 tion 412(c).

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

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

18 “(i) the value of plan assets for the
19 preceding plan year (as reduced under
20 paragraph (4)(C)), bears to

21 “(ii) the funding target of the plan for
22 the preceding plan year (determined with-
23 out regard to subsection (i)(1)),
24 is less than 80 percent.

1 “(4) EFFECT OF BALANCES ON AMOUNTS
2 TREATED AS VALUE OF PLAN ASSETS.—In the case
3 of any plan maintaining a pre-funding 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 pre-funding balance, but only if an election
13 under paragraph (2) applying any portion of
14 the pre-funding 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 pre-funding 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 pre-funding 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 pre-funding bal-
23 ance.

24 “(5) ELECTION TO REDUCE BALANCE PRIOR TO
25 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 pre-funding 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 PRE-FUND-
15 ING BALANCE AND FUNDING STANDARD CARRY-
16 OVER BALANCE.—To the extent that any plan
17 has a funding standard carryover balance great-
18 er than zero, no election may be made under
19 subparagraph (A) with respect to the pre-fund-
20 ing balance.

21 “(6) PRE-FUNDING BALANCE.—

22 “(A) IN GENERAL.—A pre-funding 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.—As of the valuation
4 date for each plan year beginning after 2007,
5 the pre-funding balance of a plan shall be in-
6 creased by the amount elected by the plan spon-
7 sor for the plan year. Such amount shall not ex-
8 ceed the excess (if any) of—

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

12 “(ii) the minimum required contribu-
13 tion for such preceding plan year (in-
14 creased by interest on any portion of such
15 minimum required contribution remaining
16 unpaid as of the valuation date for the cur-
17 rent plan year, at the effective interest rate
18 for the plan for the preceding plan year,
19 for the period beginning with the first day
20 of such preceding plan year and ending on
21 the date that payment of such portion is
22 made).

23 “(C) DECREASES.—As of the valuation
24 date for each plan year after 2007, the pre-

1 funding balance of a plan shall be decreased
2 (but not below zero) by the sum of—

3 “(i) the amount of such balance cred-
4 ited under paragraph (2) (if any) in reduc-
5 ing the minimum required contribution of
6 the plan for the preceding plan year, and

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

9 “(7) FUNDING STANDARD CARRYOVER BAL-
10 ANCE.—

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

17 “(B) BEGINNING BALANCE.—The begin-
18 ning balance of the funding standard carryover
19 balance shall be the positive balance described
20 in paragraph (1)(B)(ii)(II).

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

1 “(i) the amount of such balance cred-
2 ited under paragraph (2) (if any) in reduc-
3 ing the minimum required contribution of
4 the plan for the preceding plan year, and
5 “(ii) any reduction in such balance
6 elected under paragraph (5).

7 “(8) ADJUSTMENTS TO BALANCES.—In deter-
8 mining the pre-funding balance or the funding
9 standard carryover balance of a plan as of the valu-
10 ation date (before applying any increase or decrease
11 under paragraph (6) or (7)), the plan sponsor shall,
12 in accordance with regulations which shall be pre-
13 scribed by the Secretary, adjust such balance so as
14 to reflect the rate of net gain or loss (determined,
15 notwithstanding subsection (g)(3), on the basis of
16 fair market value) experienced by all plan assets for
17 the period beginning with the valuation date for the
18 preceding plan year and ending with the date pre-
19 ceding the valuation date for the current plan year,
20 properly taking into account, in accordance with
21 such regulations, all contributions, distributions, and
22 other plan payments made during such period.

23 “(9) ELECTIONS.—Elections under this sub-
24 section shall be made at such times, and in such

1 form and manner, as shall be prescribed in regula-
2 tions of the Secretary.

3 “(g) VALUATION OF PLAN ASSETS AND LIABIL-
4 ITIES.—

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

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

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

16 “(B) EXCEPTION FOR SMALL PLANS.—If,
17 on each day during the preceding plan year, a
18 plan had 500 or fewer participants, the plan
19 may designate any day during the plan year as
20 its valuation date for such plan year and suc-
21 ceeding plan years. For purposes of this sub-
22 paragraph, all defined benefit plans (other than
23 multiemployer plans) maintained by the same
24 employer (or any member of such employer’s
25 controlled group) shall be treated as 1 plan, but

1 only participants with respect to such employer
2 or member shall be taken into account.

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

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

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

17 “(3) AUTHORIZATION OF USE OF ACTUARIAL
18 VALUE.—For purposes of this section, the value of
19 plan assets shall be determined on the basis of any
20 reasonable actuarial method of valuation which takes
21 into account fair market value and which is per-
22 mitted under regulations prescribed by the Sec-
23 retary, except that—

24 “(A) any such method providing for aver-
25 aging of fair market values may not provide for

1 averaging of such values over more than the 36-
2 month period ending with the month which in-
3 cludes the valuation date, and

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

9 “(4) ACCOUNTING FOR CONTRIBUTION RE-
10 CEIPTS.—For purposes of this section—

11 “(A) CONTRIBUTIONS FOR PRIOR PLAN
12 YEARS TAKEN INTO ACCOUNT.—For purposes
13 of determining the value of plan assets for any
14 current plan year, in any case in which a con-
15 tribution properly allocable to amounts owed for
16 a preceding plan year is made on or after the
17 valuation date of the plan for such current plan
18 year, such contribution shall be taken into ac-
19 count, except that any such contribution made
20 during any such current plan year beginning
21 after 2007 shall be taken into account only in
22 an amount equal to its present value (deter-
23 mined using the effective rate of interest for the
24 plan for the preceding plan year) as of the valu-

1 ation date of the plan for such current plan
2 year.

3 “(B) CONTRIBUTIONS FOR CURRENT PLAN
4 YEAR DISREGARDED.—For purposes of deter-
5 mining the value of plan assets for any current
6 plan year, contributions which are properly allo-
7 cable to amounts owed for such plan year shall
8 not be taken into account, and, in the case of
9 any such contribution made before the valuation
10 date of the plan for such plan year, such value
11 of plan assets shall be reduced for interest on
12 such amount determined using the effective rate
13 of interest of the plan for the current plan year
14 for the period beginning when such payment
15 was made and ending on the valuation date of
16 the plan.

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

19 “(A) LIABILITIES TAKEN INTO ACCOUNT
20 FOR CURRENT PLAN YEAR.—In determining the
21 value of liabilities under a plan for a plan year,
22 liabilities shall be taken into account to the ex-
23 tent attributable to benefits (including any early
24 retirement or similar benefit) accrued or earned
25 as of the beginning of the plan year.

1 “(B) ACCRUALS DURING CURRENT PLAN
2 YEAR DISREGARDED.—For purposes of sub-
3 paragraph (A), benefits accrued or earned dur-
4 ing such plan year shall not be taken into ac-
5 count, irrespective of whether the valuation date
6 of the plan for such plan year is later than the
7 first day of such plan year.

8 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

9 “(1) IN GENERAL.—Subject to this subsection,
10 the determination of any present value or other com-
11 putation under this section shall be made on the
12 basis of actuarial 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 “(2) INTEREST RATES.—

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

1 would result in an amount equal to the funding
2 target of the plan for such plan year.

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

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

14 “(ii) in the case of liabilities reason-
15 ably determined to be payable during the
16 15-year period beginning at the end of the
17 period described in clause (i), the second
18 segment rate with respect to the applicable
19 month, and

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

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

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

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

24 “(iii) THIRD SEGMENT RATE.—The
25 term ‘third 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 periods beginning
8 after the period described in clause (ii).

9 “(D) CORPORATE BOND YIELD CURVE.—

10 For purposes of this paragraph—

11 “(i) IN GENERAL.—The term ‘cor-
12 porate bond yield curve’ means, with re-
13 spect to any month, a yield curve which is
14 prescribed by the Secretary for such month
15 and which reflects a 3-year weighted aver-
16 age of yields on investment grade cor-
17 porate bonds with varying maturities.

18 “(ii) 3-YEAR WEIGHTED AVERAGE.—
19 The term ‘3-year weighted average’ means
20 an average determined by using a method-
21 ology under which the most recent year is
22 weighted 50 percent, the year preceding
23 such year is weighted 35 percent, and the
24 second year preceding such year is weight-
25 ed 15 percent.

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

12 “(F) PUBLICATION REQUIREMENTS.—The
13 Secretary shall publish for each month the cor-
14 porate bond yield curve (and the corporate bond
15 yield curve reflecting the modification described
16 in section 417(e)(3)(D)(i) for such month and
17 each of the rates determined under subpara-
18 graph (B) for such month. The Secretary shall
19 also publish a description of the methodology
20 used to determine such yield curve and such
21 rates which is sufficiently detailed to enable
22 plans to make reasonable projections regarding
23 the yield curve and such rates for future
24 months based on the plan’s projection of future
25 interest rates.

1 “(G) TRANSITION RULE.—

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

8 “(I) the product of such rate for
9 such month determined without re-
10 gard to this subparagraph, multiplied
11 by the applicable percentage, and

12 “(II) the product of the rate de-
13 termined under the rules of section
14 412(b)(5)(B)(ii)(II) (as in effect for
15 plan years beginning in 2006), multi-
16 plied by a percentage equal to 100
17 percent minus the applicable percent-
18 age.

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

24 “(iii) NEW PLANS INELIGIBLE.—
25 Clause (i) shall not apply to any plan if the

1 first plan year of the plan begins after De-
2 cember 31, 2006.

3 “(3) MORTALITY TABLE.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the mortality table used in
6 determining any present value or making any
7 computation under this section shall be the
8 RP–2000 Combined Mortality Table using
9 Scale AA published by the Society of Actuaries
10 (as in effect on the date of the enactment of the
11 Pension Protection Act of 2005), projected as
12 of the plan’s valuation date.

13 “(B) SUBSTITUTE MORTALITY TABLE.—

14 “(i) IN GENERAL.—Upon request by
15 the plan sponsor and approval by the Sec-
16 retary for a period not to exceed 10 years,
17 a mortality table which meets the require-
18 ments of clause (ii) shall be used in deter-
19 mining any present value or making any
20 computation under this section. A mor-
21 tality table described in this clause shall
22 cease to be in effect if the plan actuary de-
23 termines at any time that such table does
24 not meet the requirements of subclauses
25 (I) and (II) of clause (ii).

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

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

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

11 “(iii) DEADLINE FOR DISPOSITION OF
12 APPLICATION.—Any mortality table sub-
13 mitted to the Secretary for approval under
14 this subparagraph shall be treated as in ef-
15 fect for the succeeding plan year unless the
16 Secretary, during the 180-day period be-
17 ginning on the date of such submission,
18 disapproves of such table and provides the
19 reasons that such table fails to meet the
20 requirements of clause (ii).

21 “(C) TRANSITION RULE.—Under regula-
22 tions of the Secretary, any difference in present
23 value resulting from the difference in the as-
24 sumptions as set forth in the mortality table
25 specified in subparagraph (A) and the assump-

1 tions as set forth in the mortality table de-
2 scribed in section 412(l)(7)(C)(ii) (as in effect
3 for plan years beginning in 2006) shall be
4 phased in ratably over the first period of 5 plan
5 years beginning in or after 2007 so as to be
6 fully effective for the fifth plan year. The pre-
7 ceding sentence shall not apply to any plan if
8 the first plan year of the plan begins after De-
9 cember 31, 2006.

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

15 “(A) the probability that future benefit
16 payments under the plan will be made in the
17 form of optional forms of benefits provided
18 under the plan (including lump sum distribu-
19 tions, determined on the basis of the plan’s ex-
20 perience and other related assumptions), and

21 “(B) any difference in the present value of
22 such future benefit payments resulting from the
23 use of actuarial assumptions, in determining
24 benefit payments in any such optional form of

1 benefits, which are different from those speci-
2 fied in this subsection.

3 “(5) APPROVAL OF LARGE CHANGES IN ACTU-
4 ARIAL ASSUMPTIONS.—

5 “(A) IN GENERAL.—No actuarial assump-
6 tion used to determine the funding target for a
7 plan to which this paragraph applies may be
8 changed without the approval of the Secretary.

9 “(B) PLANS TO WHICH PARAGRAPH AP-
10 PLIES.—This paragraph shall apply to a plan
11 only if—

12 “(i) the plan is a defined benefit plan
13 (other than a multiemployer plan) to which
14 title IV of the Employee Retirement In-
15 come Security Act of 1974 applies,

16 “(ii) the aggregate unfunded vested
17 benefits as of the close of the preceding
18 plan year (as determined under section
19 4006(a)(3)(E)(iii) of the Employee Retire-
20 ment Income Security Act of 1974) of such
21 plan and all other plans maintained by the
22 contributing sponsors (as defined in sec-
23 tion 4001(a)(13) of such Act) and mem-
24 bers of such sponsors’ controlled groups
25 (as defined in section 4001(a)(14) of such

1 Act) which are covered by title IV (dis-
2 regarding plans with no unfunded vested
3 benefits) exceed \$50,000,000, and

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

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

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

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

20 “(i) the present value of all liabilities
21 to participants and their beneficiaries
22 under the plan for the plan year, as deter-
23 mined by using, in addition to the actu-
24 arial assumptions described in subsection

1 (h), the supplemental actuarial assump-
2 tions described in subparagraph (B), plus
3 “(ii) a loading factor determined
4 under subparagraph (C).

5 “(B) SUPPLEMENTAL ACTUARIAL ASSUMP-
6 TIONS.—The actuarial assumptions used in de-
7 termining the valuation of the funding target
8 shall include, in addition to the actuarial as-
9 sumptions described in subsection (h), an as-
10 sumption that all participants will elect benefits
11 at such times and in such forms as will result
12 in the highest present value of liabilities under
13 subparagraph (A)(i).

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

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

19 “(ii) 4 percent of the funding target
20 (determined without regard to this para-
21 graph) of the plan for the plan year.

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

1 “(A) the present value of all benefits which
2 are expected to accrue or be earned under the
3 plan during the plan year, determined under
4 the actuarial assumptions used under para-
5 graph (1), plus

6 “(B) the loading factor under paragraph
7 (1)(C), excluding the portion of the loading fac-
8 tor described in paragraph (1)(C)(i).

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

14 “(4) TRANSITION BETWEEN APPLICABLE FUND-
15 ING TARGETS AND BETWEEN APPLICABLE TARGET
16 NORMAL COSTS.—

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

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

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

10 “(B) TRANSITION PERCENTAGE.—For
11 purposes of this paragraph, the ‘transition per-
12 centage’ for a plan year is the product derived
13 by multiplying—

14 “(i) 20 percent, by

15 “(ii) the number of plan years during
16 the period described in subparagraph (A).

17 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
18 TIONS.—

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

23 “(2) INTEREST.—Any payment required under
24 paragraph (1) for a plan year that is made on a date
25 other than the valuation date for such plan year

1 shall be adjusted for interest accruing for the period
2 between the valuation date and the payment date, at
3 the effective rate of interest for the plan for such
4 plan year.

5 “(3) ACCELERATED QUARTERLY CONTRIBUTION
6 SCHEDULE FOR UNDERFUNDED PLANS.—

7 “(A) INTEREST PENALTY FOR FAILURE TO
8 MEET ACCELERATED QUARTERLY PAYMENT
9 SCHEDULE.—In any case in which the plan has
10 a funding shortfall for the preceding plan year,
11 if the required installment is not paid in full,
12 then the minimum required contribution for the
13 plan year (as increased under paragraph (2))
14 shall be further increased by an amount equal
15 to the interest on the amount of the under-
16 payment for the period of the underpayment,
17 using an interest rate equal to the excess of—

18 “(i) 175 percent of the Federal mid-
19 term rate (as in effect under section 1274
20 for the 1st month of such plan year), over

21 “(ii) the effective rate of interest for
22 the plan for the plan year.

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:

“In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the 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 (without regard

19 to any waiver under section 412(c)) to

1 the plan for the plan year under this
2 section, or

3 “(II) in the case of a plan year
4 beginning after 2007, 100 percent of
5 the minimum required contribution
6 (without regard to any waiver under
7 section 412(c)) to the plan for the
8 preceding 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 that would be described in
13 subsection (f)(2)(B) if ‘100’ were substituted
14 for ‘500’ therein) which—

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

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

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

1 “(D) LIMITATION ON INCREASE.—If the
2 amount of any required installment is increased
3 by reason of subparagraph (A), in no event
4 shall such increase exceed the amount which,
5 when added to prior installments for the plan
6 year, is necessary to increase the funding target
7 attainment percentage of the plan for the plan
8 year (taking into account the expected increase
9 in funding target due to benefits accruing or
10 earned during the plan year) to 100 percent.

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

13 “(i) LIQUIDITY SHORTFALL.—The
14 term ‘liquidity shortfall’ means, with re-
15 spect to any required installment, an
16 amount equal to the excess (as of the last
17 day of the quarter for which such install-
18 ment is made) of—

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

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

23 “(ii) BASE AMOUNT.—

24 “(I) IN GENERAL.—The term
25 ‘base amount’ means, with respect to

1 any quarter, an amount equal to 3
2 times the sum of the adjusted dis-
3 bursements from the plan for the 12
4 months ending on the last day of such
5 quarter.

6 “(II) SPECIAL RULE.—If the
7 amount determined under subclause
8 (I) exceeds an amount equal to 2
9 times the sum of the adjusted dis-
10 bursements from the plan for the 36
11 months ending on the last day of the
12 quarter and an enrolled actuary cer-
13 tifies to the satisfaction of the Sec-
14 retary that such excess is the result of
15 nonrecurring circumstances, the base
16 amount with respect to such quarter
17 shall be determined without regard to
18 amounts related to those nonrecurring
19 circumstances.

20 “(iii) DISBURSEMENTS FROM THE
21 PLAN.—The term ‘disbursements from the
22 plan’ means all disbursements from the
23 trust, including purchases of annuities,
24 payments of single sums and other bene-
25 fits, and administrative expenses.

1 “(iv) ADJUSTED DISBURSEMENTS.—

2 The term ‘adjusted disbursements’ means
3 disbursements from the plan reduced by
4 the product of—

5 “(I) the plan’s funding target at-
6 tainment percentage for the plan year,
7 and

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

12 “(v) LIQUID ASSETS.—The term ‘liq-
13 uid assets’ means cash, marketable securi-
14 ties, and such other assets as specified by
15 the Secretary in regulations.

16 “(vi) QUARTER.—The term ‘quarter’
17 means, with respect to any required install-
18 ment, the 3-month period preceding the
19 month in which the due date for such in-
20 stallment occurs.

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

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

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

3 “(A) any person fails to make a contribu-
4 tion payment required by section 412 and this
5 section before the due date for such payment,
6 and

7 “(B) the unpaid balance of such payment
8 (including interest), when added to the aggre-
9 gate unpaid balance of all preceding such pay-
10 ments for which payment was not made before
11 the due date (including interest), exceeds
12 \$1,000,000,

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

19 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
20 This subsection shall apply to a defined benefit plan
21 (other than a multiemployer plan) for any plan year
22 for which the funding target attainment percentage
23 (as defined in subsection (d)(2)) of such plan is less
24 than 100 percent. This subsection shall not apply to
25 any plan to which section 4021 of the Employee Re-

1 tirement Income Security Act of 1974 does not
2 apply (as such section is in effect on the date of the
3 enactment of the Pension Protection Act of 2005).

4 “(3) AMOUNT OF LIEN.—For purposes of para-
5 graph (1), the amount of the lien shall be equal to
6 the aggregate unpaid balance of contribution pay-
7 ments required under this section and section 412
8 for which payment has not been made before the due
9 date.

10 “(4) NOTICE OF FAILURE; LIEN.—

11 “(A) NOTICE OF FAILURE.—A person
12 committing a failure described in paragraph (1)
13 shall notify the Pension Benefit Guaranty Cor-
14 poration of such failure within 10 days of the
15 due date for the required contribution payment.

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

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

10 “(5) ENFORCEMENT.—Any lien created under
11 paragraph (1) may be perfected and enforced only
12 by the Pension Benefit Guaranty Corporation, or at
13 the direction of the Pension Benefit Guaranty Cor-
14 poration, by the contributing sponsor (or any mem-
15 ber of the controlled group of the contributing spon-
16 sor).

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

19 “(A) CONTRIBUTION PAYMENT.—The term
20 ‘contribution payment’ means, in connection
21 with a plan, a contribution payment required to
22 be made to the plan, including any required in-
23 stallment under paragraphs (3) and (4) of sub-
24 section (i).

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

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

6 **“PART III—RULES RELATING TO MINIMUM FUND-**
7 **ING STANDARDS AND BENEFIT LIMITATIONS**

“Subpart A. Minimum funding standards for pension plans.

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

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

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

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

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

“Sec. 436. Funding-based limitation on shutdown benefits and other unpredict-
able contingent event benefits under single-employer plans.

14 **“SEC. 436. FUNDING-BASED LIMITATION ON SHUTDOWN**
15 **BENEFITS AND OTHER UNPREDICTABLE CON-**
16 **TINGENT EVENT BENEFITS UNDER SINGLE-**
17 **EMPLOYER PLANS.**

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

1 of a plant shutdown or any other unpredictable contingent
2 event occurring during any plan year if the funding target
3 attainment percentage as of the valuation date of the plan
4 for such plan year—

5 “(1) is less than 80 percent, or

6 “(2) would be less than 80 percent taking into
7 account such occurrence.

8 “(b) EXEMPTION.—Subsection (a) shall cease to
9 apply with respect to any plan year, effective as of the
10 first date of the plan year, upon payment by the plan
11 sponsor of a contribution (in addition to any minimum re-
12 quired contribution under section 430) equal to—

13 “(1) in the case of subsection (a)(1), the
14 amount of the increase in the funding target of the
15 plan (under section 430) for the plan year attrib-
16 utable to the occurrence referred to in subsection
17 (a), and

18 “(2) in the case of subsection (a)(2), the
19 amount sufficient to result in a funding target at-
20 tainment percentage of 80 percent.

21 Rules similar to the rules of section 437(f) shall apply for
22 purposes of this subsection.

23 “(c) UNPREDICTABLE CONTINGENT EVENT.—For
24 purposes of this section, the term ‘unpredictable contin-
25 gent event’ means an event other than—

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

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

6 “(d) NEW PLANS.—Subsection (a) shall not apply to
7 a plan for the first 5 plan years of the plan. For purposes
8 of this subsection, the reference in this subsection to a
9 plan shall include a reference to any predecessor plan.

10 “(e) DEEMED REDUCTION OF FUNDING BAL-
11 ANCES.—A rule similar to the rule of section 437(h) shall
12 apply for purposes of this section.”.

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

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

17 (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-
18 CRUALS.—

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

1 **“SEC. 437. FUNDING-BASED LIMITS ON BENEFITS AND BEN-**
2 **EFIT ACCRUALS UNDER SINGLE-EMPLOYER**
3 **PLANS.**

4 “(a) LIMITATIONS ON PLAN AMENDMENTS INCREAS-
5 ING LIABILITY FOR BENEFITS.—

6 “(1) IN GENERAL.—No amendment to a de-
7 fined benefit plan (other than a multiemployer plan)
8 which has the effect of increasing liabilities of the
9 plan by reason of increases in benefits, establish-
10 ment of new benefits, changing the rate of benefit
11 accrual, or changing the rate at which benefits be-
12 come nonforfeitable to the plan may take effect dur-
13 ing any plan year if the funding target attainment
14 percentage as of the valuation date of the plan for
15 such plan year is—

16 “(A) less than 80 percent, or

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

19 For purposes of this paragraph, any increase in ben-
20 efits under the plan by reason of an increase in the
21 benefit rate provided under the plan or on the basis
22 of an increase in compensation shall be treated as
23 effected by plan amendment.

24 “(2) EXEMPTION.—Paragraph (1) shall cease
25 to apply with respect to any plan year, effective as
26 of the first date of the plan year (or if later, the ef-

1 fective date of the amendment), upon payment by
2 the plan sponsor of a contribution (in addition to
3 any minimum required contribution under section
4 430) equal to—

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

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

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

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

21 “(2) EXCEPTION.—Paragraph (1) shall not
22 apply to any plan for any plan year if the terms of
23 such plan (as in effect for the period beginning on
24 June 29, 2005, and ending with such plan year)

1 provide for no benefit accruals with respect to any
2 participant during such period.

3 “(c) LIMITATIONS ON BENEFIT ACCRUALS FOR
4 PLANS WITH SEVERE FUNDING SHORTFALLS.—A de-
5 fined benefit plan (other than a multiemployer plan) shall
6 provide that, in any case in which the plan’s funding tar-
7 get attainment percentage as of the valuation date of the
8 plan for a plan year is less than 60 percent, all future
9 benefit accruals under the plan shall cease as of such date.

10 “(d) NEW PLANS.—Subsections (a) and (c) shall not
11 apply to a plan for the first 5 plan years of the plan. For
12 purposes of this subsection, the reference in this sub-
13 section to a plan shall include a reference to any prede-
14 cessor plan.

15 “(e) PRESUMED UNDERFUNDING FOR PURPOSES OF
16 BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUND-
17 ING STATUS.—

18 “(1) PRESUMPTION OF CONTINUED UNDER-
19 FUNDING.—In any case in which a benefit limitation
20 under subsection (a), (b), or (c) has been applied to
21 a plan with respect to the plan year preceding the
22 current plan year, the funding target attainment
23 percentage of the plan as of the valuation date of
24 the plan for the current plan year shall be presumed
25 to be equal to the funding target attainment per-

1 centage of the plan as of the valuation date of the
2 plan for the preceding plan year until the enrolled
3 actuary of the plan certifies the actual funding tar-
4 get attainment percentage of the plan as of the valu-
5 ation date of the plan for the current plan year.

6 “(2) PRESUMPTION OF UNDERFUNDING AFTER
7 10TH MONTH.—In any case in which no such certifi-
8 cation is made with respect to the plan before the
9 first day of the 10th month of the current plan year,
10 for purposes of subsections (a), (b), and (c), the
11 plan’s funding target attainment percentage shall be
12 conclusively presumed to be less than 60 percent as
13 of the first day of such 10th month, and such day
14 shall be deemed, for purposes of such subsections, to
15 be the valuation date of the plan for the current
16 plan year.

17 “(3) PRESUMPTION OF UNDERFUNDING AFTER
18 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—
19 In any case in which—

20 “(A) a benefit limitation under subsection
21 (a), (b), or (c) did not apply to a plan with re-
22 spect to the plan year preceding the current
23 plan year, but the funding target attainment
24 percentage of the plan for such preceding plan
25 year was not more than 10 percentage points

1 greater than the percentage which would have
2 caused such subsection to apply to the plan
3 with respect to such preceding plan year, and

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

10 until the enrolled actuary so certifies, such first day
11 shall be deemed, for purposes of such subsection, to
12 be the valuation date of the plan for the current
13 plan year and the funding target attainment per-
14 centage of the plan as of such first day shall, for
15 purposes of such subsection, be presumed to be
16 equal to 10 percentage points less than the funding
17 target attainment percentage of the plan as of the
18 valuation date of the plan for such preceding plan
19 year.

20 “(f) RESTORATION BY PLAN AMENDMENT OF BENE-
21 FITS OR BENEFIT ACCRUAL.—In any case in which a pro-
22 hibition under subsection (b) of a payment described in
23 subsection (b)(1) or a cessation of benefit accruals under
24 subsection (c) is applied to a plan with respect to any plan
25 year and such prohibition or cessation, as the case may

1 be, ceases to apply to any subsequent plan year, the plan
2 may provide for the resumption of such benefit payment
3 or such benefit accrual only by means of the adoption of
4 a plan amendment after the valuation date of the plan
5 for such subsequent plan year. The preceding sentence
6 shall not apply to a prohibition or cessation required by
7 reason of subsection (e).

8 “(g) FUNDING TARGET ATTAINMENT PERCENT-
9 AGE.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, the term ‘funding target attainment percent-
12 age’ means, with respect to any plan for any plan
13 year, the ratio (expressed as a percentage) which—

14 “(A) the value of plan assets for the plan
15 year (as determined under section 430(g)) re-
16 duced by the pre-funding balance and the fund-
17 ing standard carryover balance (within the
18 meaning of section 430(f)), bears to

19 “(B) the funding target of the plan for the
20 plan year (as determined under section
21 430(d)(1), but without regard to section
22 430(i)(1)).

23 “(2) APPLICATION TO PLANS WHICH ARE
24 FULLY FUNDED WITHOUT REGARD TO REDUCTIONS
25 FOR FUNDING BALANCES.—

1 “(A) IN GENERAL.—In the case of a plan
 2 for any plan year, if the funding target attain-
 3 ment percentage is 100 percent or more (deter-
 4 mined without regard to this subparagraph and
 5 without regard to the reduction under para-
 6 graph (1)(A) for the pre-funding balance and
 7 the funding standard carryover balance), para-
 8 graph (1) shall be applied without regard to
 9 such reduction.

10 “(B) TRANSITION RULE.—Subparagraph
 11 (A) shall be applied to plan years beginning
 12 after 2006 and before 2011 by substituting for
 13 ‘100 percent’ the applicable percentage deter-
 14 mined in accordance with the following table:

“In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2007	92 percent
2008	94 percent
2009	96 percent
2010	98 percent.

15 “(C) LIMITATION.—Subparagraph (B)
 16 shall not apply with respect to any plan year
 17 after 2007 unless the funding target attainment
 18 percentage (determined without regard to this
 19 paragraph and without regard to the reduction
 20 under paragraph (1)(A) for the pre-funding bal-
 21 ance and the funding standard carryover bal-

1 ance) of the plan for each preceding plan year
2 after 2006 was not less than the applicable per-
3 centage with respect to such preceding plan
4 year determined under subparagraph (B).

5 “(h) DEEMED REDUCTION OF FUNDING BAL-
6 ANCES.—In the case of a plan maintained pursuant to 1
7 or more collective bargaining agreements between em-
8 ployee representatives and 1 or more employers—

9 “(1) IN GENERAL.—In any case in which a ben-
10 efit limitation under subsection (a), (b), or (c) would
11 (but for this subsection and determined without re-
12 gard to subsection (a)(2)) apply to such plan for the
13 plan year, the plan sponsor of such plan shall be
14 treated for purposes of this title as having made an
15 election under section 430(f)(5) to reduce the bal-
16 ance of the pre-funding balance and the funding
17 standard carryover balance for the plan year (in a
18 manner consistent with the requirements of section
19 430(f)(5)(B)) by such amount as is necessary for
20 such benefit limitation to not apply to the plan for
21 such plan year.

22 “(2) EXCEPTION FOR INSUFFICIENT FUNDING
23 BALANCES.—Paragraph (1) shall not apply with re-
24 spect to a benefit limitation for any plan year if the

1 application of paragraph (1) would not result in the
2 benefit limitation not applying for such plan year.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for such subpart is amended by adding at the
5 end the following new item:

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

6 (c) EFFECTIVE DATE.—

7 (1) SHUTDOWN BENEFITS.—Except as provided
8 in paragraph (3), the amendments made by sub-
9 section (a) shall apply with respect to plant shut-
10 downs, or other unpredictable contingent events, oc-
11 ccurring after December 31, 2006.

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

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

23 (A) the later of—

1 (i) the date on which the last collec-
2 tive bargaining agreement relating to the
3 plan terminates (determined without re-
4 gard to any extension thereof agreed to
5 after the date of the enactment of this
6 Act), or

7 (ii) the first day of the first plan year
8 to which the amendments made by this
9 subsection would (but for this subpara-
10 graph) apply, or

11 (B) January 1, 2009.

12 For purposes of clause (i), any plan amendment
13 made pursuant to a collective bargaining agreement
14 relating to the plan which amends the plan solely to
15 conform to any requirement added by this subsection
16 shall not be treated as a termination of such collec-
17 tive bargaining agreement.

18 (d) SPECIAL RULE FOR 2007.—For purposes of ap-
19 plying subsection (e) of section 437 of such Code (as
20 added by this section) to current plan years (within the
21 meaning of such subsection) beginning in 2007, the modi-
22 fied funded current liability percentage of the plan for the
23 preceding year shall be substituted for the funding target
24 attainment percentage of the plan for the preceding year.
25 For purposes of the preceding sentence, the term “modi-

1 fied funded current liability percentage” means the funded
2 current liability percentage (as defined in section 412(l)(8)
3 of such Code), reduced as described in subparagraph (E)
4 thereof in the case of a plan with a funded current liability
5 percentage (as so defined and before such reduction)
6 which is less than 100 percent.

7 **SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.**

8 (a) AMENDMENTS RELATED TO QUALIFICATION RE-
9 QUIREMENTS.—

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

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

19 (2) Section 401(a)(32) of such Code is
20 amended—

21 (A) in subparagraph (A), by striking
22 “412(m)(5)” each place it appears and insert-
23 ing “430(j)(4)”, and

24 (B) in subparagraph (C), by striking “sec-
25 tion 412(m) by reason of paragraph (5)(A)

1 thereof” and inserting “section 430(j)(3) by
2 reason of section 430(j)(4)(A)”.

3 (3) Section 401(a)(33) of such Code is
4 amended—

5 (A) in subparagraph (B)(i), by striking
6 “funded current liability percentage (as defined
7 in section 412(l)(8))” and inserting “funding
8 target attainment percentage (as defined in sec-
9 tion 430(d)(2))”,

10 (B) in subparagraph (B)(iii), by striking
11 “subsection 412(c)(8)” and inserting “section
12 412(d)(2)”, and

13 (C) in subparagraph (D), by striking “sec-
14 tion 412(c)(11) (without regard to subpara-
15 graph (B) thereof)” and inserting “section
16 412(b) (without regard to paragraph (2) there-
17 of)”.

18 (b) VESTING RULES.—Section 411 of such Code is
19 amended—

20 (1) by striking “section 412(c)(8)” in sub-
21 section (a)(3)(C) and inserting “section 412(d)(2)”,

22 (2) in subsection (b)(1)(F)—

23 (A) by striking “paragraphs (2) and (3) of
24 section 412(i)” in clause (ii) and inserting

1 “subparagraphs (B) and (C) of section
2 412(e)(3)”, and

3 (B) by striking “paragraphs (4), (5), and
4 (6) of section 412(i)” and inserting “subpara-
5 graphs (D), (E), and (F) of section 412(e)(3)”,
6 and

7 (3) by striking “section 412(c)(8)” in sub-
8 section (d)(6)(A) and inserting “section 412(d)(2)”.

9 (c) MERGERS AND CONSOLIDATIONS OF PLANS.—
10 Subclause (I) of section 414(l)(2)(B)(i) of such Code is
11 amended to read as follows:

12 “(I) the amount determined
13 under section 431(c)(6)(A)(i) in the
14 case of a multiemployer plan (and the
15 sum of the target liability amount and
16 target normal cost determined under
17 section 430 in the case of any other
18 plan), over”.

19 (d) TRANSFER OF EXCESS PENSION ASSETS TO RE-
20 TIREE HEALTH ACCOUNTS.—

21 (1) Section 420(e)(2) of such Code is amended
22 to read as follows:

23 “(2) EXCESS PENSION ASSETS.—The term ‘ex-
24 cess pension assets’ means the excess (if any) of—

25 “(A) the lesser of—

1 “(i) the fair market value of the
2 plan’s assets (reduced by the pre-funding
3 balance and the funding standard carry-
4 over balance, as determined under section
5 430(f)), or

6 “(ii) the value of plan assets as deter-
7 mined under section 430(g)(3) (reduced by
8 the pre-funding balance and the funding
9 standard carryover balance, as determined
10 under section 430(f)), over

11 “(B) 125 percent of the sum of the target
12 liability amount and the target normal cost de-
13 termined under section 430 for such plan
14 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, be
20 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 defined benefit plan which
6 is not a multiemployer plan, 10 percent of the aggregate
7 unpaid minimum required contributions for all
8 plan years remaining unpaid as of the end of any
9 plan year ending with or within the taxable year,
10 and

11 “(2) in the case of a multiemployer plan, 5 per-
12 cent of the accumulated funding deficiency deter-
13 mined under section 431 as of the end of any plan
14 year ending with or within the taxable year.

15 “(b) ADDITIONAL TAX.—If—

16 “(1) a tax is imposed under subsection (a)(1)
17 on any unpaid required minimum contribution and
18 such amount remains unpaid as of the close of the
19 taxable period, or

20 “(2) a tax is imposed under subsection (a)(2)
21 on any accumulated funding deficiency and the accu-
22 mulated funding deficiency is not corrected within
23 the taxable period,

24 there is hereby imposed a tax equal to 100 percent of the
25 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 in the
22 order in which such contributions became due
23 and then to the minimum required contribution
24 under section 430 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)(2)”.

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

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)(3)”.

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 (g) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to years beginning after December
8 31, 2006.

9 **Subtitle C—Other Provisions**

10 **SEC. 121. MODIFICATION OF TRANSITION RULE TO PEN-** 11 **SION FUNDING REQUIREMENTS.**

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

13 (1) was not required to pay a variable rate pre-
14 mium for the plan year beginning in 1996,

15 (2) has not, in any plan year beginning after
16 1995, merged with another plan (other than a plan
17 sponsored by an employer that was in 1996 within
18 the controlled group of the plan sponsor); and

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

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

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

1 (1) For purposes of section 430(j)(3) of the In-
 2 ternal Revenue Code of 1986 and section 303(j)(3)
 3 of the Employee Retirement Income Security Act of
 4 1974, the plan shall be treated as not having a fund-
 5 ing shortfall for any plan year.

6 (2) For purposes of—

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

10 (B) determining any present value or mak-
 11 ing any computation under section 412 of such
 12 Code or section 302 of such Act,

13 the mortality table shall be the mortality table used
 14 by the plan.

15 (3) Section 430(c)(5)(B) of such Code and sec-
 16 tion 303(c)(5)(B) of such Act (relating to phase-in
 17 of funding target for exemption from new shortfall
 18 amortization base) shall each be applied by sub-
 19 stituting “2012” for “2011” therein and by sub-
 20 stituting for the table therein the following:

In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2007	90 percent
2008	92 percent
2009	94 percent
2010	96 percent
2011	98 percent.

1 (c) DEFINITIONS.—Any term used in this section
2 which is also used in section 430 of such Code or section
3 303 of such Act shall have the meaning provided such
4 term in such section. If the same term has a different
5 meaning in such Code and such Act, such term shall, for
6 purposes of this section, have the meaning provided by
7 such Code when applied with respect to such Code and
8 the meaning provided by such Act when applied with re-
9 spect to such Act.

10 (d) SPECIAL RULE FOR 2006.—

11 (1) IN GENERAL.—Section 769(c)(3) of the Re-
12 tirement Protection Act of 1994, as added by section
13 201 of the Pension Funding Equity Act of 2004, is
14 amended by striking “and 2005” and inserting “,
15 2005, and 2006”.

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

19 (e) CONFORMING AMENDMENT.—

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

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

1 **SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COM-**
2 **PENSATION PLANS WHEN EMPLOYER DE-**
3 **FINED BENEFIT PLAN IN AT-RISK STATUS.**

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

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

12 “(A) during any period in which a defined
13 benefit plan to which section 412 applies is in
14 an at-risk status (as defined in section
15 430(i)(3)), assets are set aside (directly or indi-
16 rectly) in a trust (or other arrangement deter-
17 mined by the Secretary), or transferred to such
18 a trust or other arrangement, for purposes of
19 paying deferred compensation under a non-
20 qualified deferred compensation plan of the em-
21 ployer maintaining the defined benefit plan, or

22 “(B) a nonqualified deferred compensation
23 plan of the employer provides that assets will
24 become restricted to the provision of benefits
25 under the plan in connection with such at-risk
26 status (or other similar financial measure deter-

1 mined by the Secretary) of the defined benefit
2 plan, or assets are so restricted,
3 such assets shall for purposes of section 83 be treat-
4 ed as property transferred in connection with the
5 performance of services whether or not such assets
6 are available to satisfy claims of general creditors.
7 Subparagraph (A) shall not apply with respect to
8 any assets which are so set aside before the defined
9 benefit plan is in at-risk status.”.

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

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to transfers or reservations of as-
17 sets after December 31, 2005.

18 (d) SPECIAL RULE FOR 2006.—For purposes of de-
19 termining if a plan is in at-risk status (within the meaning
20 of section 409A of such Code, as added by this section)
21 for any plan year beginning in 2006, such section shall
22 be applied by substituting the plan’s modified funded cur-
23 rent liability percentage for the plan’s funding target at-
24 tainment percentage. For purposes of the preceding sen-
25 tence, the term “modified funded current liability percent-

1 age” means the funded current liability percentage (as de-
2 fined in section 412(l)(8) of such Code), reduced as de-
3 scribed in subparagraph (E) thereof.

4 **TITLE II—FUNDING RULES FOR**
5 **MULTIEMPLOYER DEFINED**
6 **BENEFIT PLANS**

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

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

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 section 102) is amended further by inserting
15 after section 303 the following new section:

16 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER
17 PLANS

18 “SEC. 304. (a) IN GENERAL.—For purposes of sec-
19 tion 302, the accumulated funding deficiency of a multi-
20 employer plan for any plan year is—

21 “(1) except as provided in paragraph (2), the
22 amount, determined as of the end of the plan year,
23 equal to the excess (if any) of the total charges to
24 the funding standard account of the plan for all plan
25 years (beginning with the first plan year for which

1 this part applies to the plan) over the total credits
2 to such account for such years, and

3 “(2) if the multiemployer plan is in reorganiza-
4 tion for any plan year, the accumulated funding de-
5 ficiency of the plan determined under section 4243.

6 “(b) FUNDING STANDARD ACCOUNT.—

7 “(1) ACCOUNT REQUIRED.—Each multiem-
8 ployer plan to which this part applies shall establish
9 and maintain a funding standard account. Such ac-
10 count shall be credited and charged solely as pro-
11 vided in this section.

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

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

17 “(B) the amounts necessary to amortize in
18 equal annual installments (until fully amor-
19 tized)—

20 “(i) in the case of a plan in existence
21 on January 1, 1974, the unfunded past
22 service liability under the plan on the first
23 day of the first plan year to which this
24 part applies, over a period of 40 plan
25 years,

1 “(ii) in the case of a plan which comes
2 into existence after January 1, 1974, the
3 unfunded past service liability under the
4 plan on the first day of the first plan year
5 to which this part applies, over a period of
6 15 plan years,

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

16 “(v) separately, with respect to each
17 plan year, the net loss (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 necessary to amortize
22 each waived funding deficiency (within the
23 meaning of section 302(c)(3)) for each prior
24 plan year in equal annual installments (until
25 fully amortized) over a period of 15 plan years,

1 “(D) the amount necessary to amortize in
2 equal annual installments (until fully amor-
3 tized) over a period of 5 plan years any amount
4 credited to the funding standard account under
5 section 302(b)(3)(D) (as in effect on the day
6 before the date of the enactment of the Pension
7 Protection Act of 2005), and

8 “(E) the amount necessary to amortize in
9 equal annual installments (until fully amor-
10 tized) over a period of 20 years the contribu-
11 tions which would be required to be made under
12 the plan but for the provisions of section
13 302(c)(7)(A)(i)(I) (as in effect on the day be-
14 fore the date of the enactment of the Pension
15 Protection Act of 2005).

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

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

22 “(B) the amount necessary to amortize in
23 equal annual installments (until fully amor-
24 tized)—

1 “(i) separately, with respect to each
2 plan year, the net decrease (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 “(ii) separately, with respect to each
7 plan year, the net experience gain (if any)
8 under the plan, over a period of 15 plan
9 years, and

10 “(iii) separately, with respect to each
11 plan year, the net gain (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 of the waived funding de-
16 ficiency (within the meaning of section
17 302(c)(3)) for the plan year, and

18 “(D) in the case of a plan year for which
19 the accumulated funding deficiency is deter-
20 mined under the funding standard account if
21 such plan year follows a plan year for which
22 such deficiency was determined under the alter-
23 native minimum funding standard under section
24 305 (as in effect on the day before the date of
25 the enactment of the Pension Protection Act of

1 2005), the excess (if any) of any debit balance
2 in the funding standard account (determined
3 without regard to this subparagraph) over any
4 debit balance in the alternative minimum fund-
5 ing standard account.

6 “(4) SPECIAL RULES FOR CERTAIN PRE-2007
7 AMORTIZATIONS.—

8 “(A) IN GENERAL.—In the case of any
9 amount amortized under section 302(b) (as in
10 effect on the day before the date of the enact-
11 ment of the Pension Protection Act of 2005)
12 over any period beginning with a plan year be-
13 ginning before 2007, in lieu of the amortization
14 described in paragraphs (2)(B) and (3)(B),
15 such amount shall continue to be amortized
16 under such section as so in effect.

17 “(B) INTEREST RATE.—For purposes of
18 amortizations under section 302(b) (as in effect
19 on the day before the date of the enactment of
20 the Pension Protection Act of 2005), in the
21 case of any waiver under section 303 (as so in
22 effect) or extension under section 304 (as so in
23 effect) with respect to which application has
24 been made before June 30, 2005, the interest
25 rate under section 303(a)(2) (as so in effect) or

1 section 304(a) (as so in effect), as the case may
2 be, shall apply.

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

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

13 “(B) may be offset against amounts re-
14 quired to be amortized under the other such
15 paragraph, with the resulting amount to be am-
16 ortized over a period determined on the basis of
17 the remaining amortization periods for all items
18 entering into whichever of the two amounts
19 being offset is the greater.

20 “(6) INTEREST.—Except as provided in sub-
21 section (c)(9), the funding standard account (and
22 items therein) shall be charged or credited (as deter-
23 mined under regulations prescribed by the Secretary
24 of the Treasury) with interest at the appropriate

1 rate consistent with the rate or rates of interest used
2 under the plan to determine costs.

3 “(7) CERTAIN AMORTIZATION CHARGES AND
4 CREDITS.—In the case of a plan which, immediately
5 before the date of the enactment of the Multiem-
6 ployer Pension Plan Amendments Act of 1980, was
7 a multiemployer plan (within the meaning of section
8 3(37) as in effect immediately before such date)—

9 “(A) any amount described in paragraph
10 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-
11 section which arose in a plan year beginning be-
12 fore such date shall be amortized in equal an-
13 nual installments (until fully amortized) over 40
14 plan years, beginning with the plan year in
15 which the amount arose,

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

23 “(C) any change in past service liability
24 which arises during the period of 3 plan years
25 beginning on or after such date, and results

1 from a plan amendment adopted before such
2 date, shall be amortized in equal annual install-
3 ments (until fully amortized) over 40 plan
4 years, beginning with the plan year in which the
5 change arises, and

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

12 “(i) was adopted before such date,
13 and

14 “(ii) was effective for any plan partici-
15 pant before the beginning of the first plan
16 year beginning on or after such date,
17 shall be amortized in equal annual installments
18 (until fully amortized) over 40 plan years, be-
19 ginning with the plan year in which the change
20 arises.

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

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 MULTIEM-
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 2005) 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)(iv) 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 pay-
22 able under the plan during a period that does
23 not exceed 14 years, paragraph (2)(B)(iii) shall
24 be applied separately with respect to such in-
25 crease in unfunded past service liability by sub-

1 stituting the number of years of the period dur-
2 ing which such benefits are payable for ‘15’.

3 “(c) ADDITIONAL RULES.—

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

10 “(2) VALUATION OF ASSETS.—

11 “(A) IN GENERAL.—For purposes of this
12 section, the value of the plan’s assets shall be
13 determined on the basis of any reasonable actu-
14 arial method of valuation which takes into ac-
15 count fair market value and which is permitted
16 under regulations prescribed by the Secretary of
17 the Treasury.

18 “(B) ELECTION WITH RESPECT TO
19 BONDS.—The value of a bond or other evidence
20 of indebtedness which is not in default as to
21 principal or interest may, at the election of the
22 plan administrator, be determined on an amor-
23 tized basis running from initial cost at purchase
24 to par value at maturity or earliest call date.
25 Any election under this subparagraph shall be

1 made at such time and in such manner as the
2 Secretary of the Treasury shall by regulations
3 provide, shall apply to all such evidences of in-
4 debtedness, and may be revoked only with the
5 consent of such Secretary.

6 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
7 SONABLE.—For purposes of this section, all costs, li-
8 abilities, rates of interest, and other factors under
9 the plan shall be determined on the basis of actu-
10 arial assumptions and methods—

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

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

17 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
18 PERIENCE GAIN OR LOSS.—For purposes of this sec-
19 tion, if—

20 “(A) a change in benefits under the Social
21 Security Act or in other retirement benefits cre-
22 ated under Federal or State law, or

23 “(B) a change in the definition of the term
24 ‘wages’ under section 3121 of the Internal Rev-
25 enue Code of 1986, or a change in the amount

1 of such wages taken into account under regula-
2 tions prescribed for purposes of section
3 401(a)(5) of such Code,
4 results in an increase or decrease in accrued liability
5 under a plan, such increase or decrease shall be
6 treated as an experience loss or gain.

7 “(5) FULL FUNDING.—If, as of the close of a
8 plan year, a plan would (without regard to this para-
9 graph) have an accumulated funding deficiency in
10 excess of the full funding limitation—

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

13 “(B) all amounts described in subpara-
14 graphs (B), (C), and (D) of subsection (b)(2)
15 and subparagraph (B) of subsection (b)(3)
16 which are required to be amortized shall be con-
17 sidered fully amortized for purposes of such
18 subparagraphs.

19 “(6) FULL-FUNDING LIMITATION.—

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

23 “(i) the accrued liability (including
24 normal cost) under the plan (determined
25 under the entry age normal funding meth-

1 od if such accrued liability cannot be di-
2 rectly calculated under the funding method
3 used for the plan), over
4 “ (ii) the lesser of—
5 “ (I) the fair market value of the
6 plan’s assets, or
7 “ (II) the value of such assets de-
8 termined under paragraph (2).
9 “(B) MINIMUM AMOUNT.—
10 “(i) IN GENERAL.—In no event shall
11 the full-funding limitation determined
12 under subparagraph (A) be less than the
13 excess (if any) of—
14 “ (I) 90 percent of the current li-
15 ability of the plan (including the ex-
16 pected increase in current liability due
17 to benefits accruing during the plan
18 year), over
19 “ (II) the value of the plan’s as-
20 sets determined under paragraph (2).
21 “(ii) ASSETS.—For purposes of clause
22 (i), assets shall not be reduced by any
23 credit balance in the funding standard ac-
24 count.

1 “(C) FULL FUNDING LIMITATION.—For
2 purposes of this paragraph, unless otherwise
3 provided by the plan, the accrued liability under
4 a multiemployer plan shall not include benefits
5 which are not nonforfeitable under the plan
6 after the termination of the plan (taking into
7 consideration section 411(d)(3) of the Internal
8 Revenue Code of 1986).

9 “(D) CURRENT LIABILITY.—For purposes
10 of this paragraph—

11 “(i) IN GENERAL.—The term ‘current
12 liability’ means all liabilities to employees
13 and their beneficiaries under the plan.

14 “(ii) TREATMENT OF UNPREDICTABLE
15 CONTINGENT EVENT BENEFITS.—For pur-
16 poses of clause (i), any benefit contingent
17 on an event other than—

18 “(I) age, service, compensation,
19 death, or disability, or

20 “(II) an event which is reason-
21 ably and reliably predictable (as deter-
22 mined by the Secretary of the Treas-
23 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.—In the case
19 of plan years beginning after Decem-
20 ber 31, 1995, the Secretary of the
21 Treasury shall establish mortality ta-
22 bles which may be used (in lieu of the
23 tables under clause (iv)) to determine
24 current liability under this subsection
25 for individuals who are entitled to

1 benefits under the plan on account of
2 disability. Such Secretary shall estab-
3 lish separate tables for individuals
4 whose disabilities occur in plan years
5 beginning before January 1, 1995,
6 and for individuals whose disabilities
7 occur in plan years beginning on or
8 after such date.

9 “(II) SPECIAL RULE FOR DIS-
10 ABILITIES OCCURRING AFTER 1994.—
11 In the case of disabilities occurring in
12 plan years beginning after December
13 31, 1994, the tables under subclause
14 (I) shall apply only with respect to in-
15 dividuals described in such subclause
16 who are disabled within the meaning
17 of title II of the Social Security Act
18 and the regulations thereunder.

19 “(vi) PERIODIC REVIEW.—The Sec-
20 retary of the Treasury shall periodically (at
21 least every 5 years) review any tables in ef-
22 fect under this subparagraph and shall, to
23 the extent such Secretary determines nec-
24 essary, by regulation update the tables to
25 reflect the actual experience of pension

1 plans and projected trends in such experi-
2 ence.

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

7 “(i) IN GENERAL.—If any rate of in-
8 terest used under the plan under sub-
9 section (b)(6) to determine cost is not
10 within the permissible range, the plan shall
11 establish a new rate of interest within the
12 permissible range.

13 “(ii) PERMISSIBLE RANGE.—For pur-
14 poses of this subparagraph—

15 “(I) IN GENERAL.—Except as
16 provided in subclause (II), the term
17 ‘permissible range’ means a rate of in-
18 terest which is not more than 5 per-
19 cent above, and not more than 10 per-
20 cent below, the weighted average of
21 the rates of interest on 30-year Treas-
22 ury securities during the 4-year period
23 ending on the last day before the be-
24 ginning of the plan year.

1 “(II) SECRETARIAL AUTHOR-
2 ITY.—If the Secretary of the Treasury
3 finds that the lowest rate of interest
4 permissible under subclause (I) is un-
5 reasonably high, such Secretary may
6 prescribe a lower rate of interest, ex-
7 cept that such rate may not be less
8 than 80 percent of the average rate
9 determined under such subclause.

10 “(iii) ASSUMPTIONS.—Notwith-
11 standing paragraph (3)(A), the interest
12 rate used under the plan shall be—

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

16 “(II) consistent with the assump-
17 tions which reflect the purchase rates
18 which would be used by insurance
19 companies to satisfy the liabilities
20 under the plan.

21 “(7) ANNUAL VALUATION.—

22 “(A) IN GENERAL.—For purposes of this
23 section, a determination of experience gains and
24 losses and a valuation of the plan’s liability
25 shall be made not less frequently than once

1 every year, except that such determination shall
2 be made more frequently to the extent required
3 in particular cases under regulations prescribed
4 by the Secretary of the Treasury.

5 “(B) VALUATION DATE.—

6 “(i) CURRENT YEAR.—Except as pro-
7 vided in clause (ii), the valuation referred
8 to in subparagraph (A) shall be made as of
9 a date within the plan year to which the
10 valuation refers or within one month prior
11 to the beginning of such year.

12 “(ii) USE OF PRIOR YEAR VALU-
13 ATION.—The valuation referred to in sub-
14 paragraph (A) may be made as of a date
15 within the plan year prior to the year to
16 which the valuation refers if, as of such
17 date, the value of the assets of the plan are
18 not less than 100 percent of the plan’s cur-
19 rent liability (as defined in paragraph
20 (6)(D) without regard to clause (iv) there-
21 of).

22 “(iii) ADJUSTMENTS.—Information
23 under clause (ii) shall, in accordance with
24 regulations, be actuarially adjusted to re-
25 flect significant differences in participants.

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

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

20 “(9) INTEREST RULE FOR WAIVERS AND EX-
21 TENSIONS.—The interest rate applicable for any
22 plan year for purposes of computing the amortiza-
23 tion charge described in subsection (b)(2)(C) and in
24 connection with an extension granted under sub-
25 section (d) shall be the greater of—

1 “(A) 150 percent of the Federal mid-term
2 rate (as in effect under section 1274 of the In-
3 ternal Revenue Code of 1986 for the 1st month
4 of such plan year), or

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

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

10 “(1) EXTENSION.—The period of years re-
11 quired to amortize any unfunded liability (described
12 in any clause of subsection (b)(2)(B)) of any multi-
13 employer plan shall be extended by the Secretary of
14 the Treasury for a period of time (not in excess of
15 5 years) if it is demonstrated to such Secretary
16 that—

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

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

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

1 “(2) ADDITIONAL EXTENSION.—The period of
2 years required to amortize any unfunded liability
3 (described in any clause of subsection (b)(2)(B)) of
4 any multiemployer plan may be extended (in addi-
5 tion to any extension under paragraph (1)) by the
6 Secretary of the Treasury for a period of time (not
7 in excess of 5 years) if such Secretary determines
8 that such extension would carry out the purposes of
9 this Act and would provide adequate protection for
10 participants under the plan and their beneficiaries
11 and if such Secretary determines that the failure to
12 permit such extension would—

13 “(A) result in—

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

16 “(ii) a substantial curtailment of pen-
17 sion benefit levels or employee compensa-
18 tion, and

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

21 “(3) ADVANCE NOTICE.—

22 “(A) IN GENERAL.—The Secretary of the
23 Treasury shall, before granting an extension
24 under this section, require each applicant to
25 provide evidence satisfactory to such Secretary

1 that the applicant has provided notice of the fil-
2 ing of the application for such extension to each
3 affected party (as defined in section
4 4001(a)(21)) with respect to the affected plan.
5 Such notice shall include a description of the
6 extent to which the plan is funded for benefits
7 which are guaranteed under title IV and for
8 benefit liabilities.

9 “(B) CONSIDERATION OF RELEVANT IN-
10 FORMATION.—The Secretary of the Treasury
11 shall consider any relevant information provided
12 by a person to whom notice was given under
13 paragraph (1).”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 301 of such Act (29 U.S.C. 1081)
16 is amended by striking subsection (d).

17 (2) The table of contents in section 1 of such
18 Act (as amended by section 102 of this Act) is
19 amended further by inserting after the item relating
20 to section 303 the following new item:

 “Sec. 304. Minimum funding standards for multiemployer plans.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to plan years beginning after De-
23 cember 31, 2006.

1 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**
2 **PLOYER PLANS IN ENDANGERED OR CRIT-**
3 **ICAL STATUS.**

4 (a) IN GENERAL.—Part 3 of subtitle B of title I of
5 the Employee Retirement Income Security Act of 1974 (as
6 amended by the preceding provisions of this Act) is
7 amended further by inserting after section 304 the fol-
8 lowing new section:

9 “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER
10 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS
11 “SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN
12 ACTUARY.—

13 “(1) IN GENERAL.—During the 90-day period
14 beginning on first day of each plan year of a multi-
15 employer plan, the plan actuary shall certify to the
16 Secretary of the Treasury whether or not the plan
17 is in endangered status for such plan year and
18 whether or not the plan is in critical status for such
19 plan year.

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

22 “(A) IN GENERAL.—In making the deter-
23 minations under paragraph (1), the plan actu-
24 ary shall make projections under subsections
25 (b)(2) and (c)(2) for the current and succeeding
26 plan years, using reasonable actuarial assump-

1 tions and methods, of the current value of the
2 assets of the plan and the present value of all
3 liabilities to participants and beneficiaries under
4 the plan for the current plan year as of the be-
5 ginning of such year, as based on the actuarial
6 statement prepared for the preceding plan year
7 under section 103(d).

8 “(B) DETERMINATIONS OF FUTURE CON-
9 TRIBUTIONS.—Any such actuarial projection of
10 plan assets shall assume—

11 “(i) reasonably anticipated employer
12 and employee contributions for the current
13 and succeeding plan years, assuming that
14 the terms of the one or more collective bar-
15 gaining agreements pursuant to which the
16 plan is maintained for the current plan
17 year continue in effect for succeeding plan
18 years, or

19 “(ii) that employer and employee con-
20 tributions for the most recent plan year
21 will continue indefinitely, but only if the
22 plan actuary determines there have been
23 no significant demographic changes that
24 would make continued application of such
25 terms unreasonable.

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

8 “(4) NOTICE.—In any case in which a multiem-
9 ployer plan is certified to be in endangered status
10 under paragraph (1) or enters into critical status,
11 the plan sponsor shall, not later than 30 days after
12 the date of the certification or entry, provide notifi-
13 cation of the endangered or critical status to the
14 participants and beneficiaries, the bargaining par-
15 ties, the Pension Benefit Guaranty Corporation, the
16 Secretary of the Treasury, and the Secretary of
17 Labor.

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

20 “(1) IN GENERAL.—In any case in which a
21 multiemployer plan is in endangered status for a
22 plan year and no funding improvement plan under
23 this subsection with respect to such multiemployer
24 plan is in effect for the plan year, the plan sponsor
25 shall, in accordance with this subsection, amend the

1 multiemployer plan to include a funding improve-
2 ment plan upon approval thereof by the bargaining
3 parties under this subsection. The amendment shall
4 be adopted not later than 240 days after the date
5 on which the plan is certified to be in endangered
6 status under subsection (a)(1).

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

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

13 “(B) the plan has an accumulated funding
14 deficiency for such plan year under section 304
15 or is projected to have such an accumulated
16 funding deficiency for any of the 6 succeeding
17 plan years, taking into account any extension of
18 amortization periods under section 304(d).

19 “(3) **FUNDING IMPROVEMENT PLAN.**—

20 “(A) **BENCHMARKS.**—A funding improve-
21 ment plan shall consist of amendments to the
22 plan formulated to provide, under reasonable
23 actuarial assumptions, for the attainment, dur-
24 ing the funding improvement period under the

1 funding improvement plan, of the following
2 benchmarks:

3 “(i) INCREASE IN FUNDED PERCENT-
4 AGE.—An increase in the plan’s funded
5 percentage such that—

6 “(I) the difference between 100
7 percent and the plan’s funded per-
8 centage for the last year of the fund-
9 ing improvement period, is not more
10 than

11 “(II) $\frac{2}{3}$ of the difference between
12 100 percent and the plan’s funded
13 percentage for the first year of the
14 funding improvement period.

15 “(ii) AVOIDANCE OF ACCUMULATED
16 FUNDING DEFICIENCIES.—No accumulated
17 funding deficiency for any plan year during
18 the funding improvement period (taking
19 into account any extension of amortization
20 periods under section 304(d)).

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

1 “(i) the second anniversary of the
2 date of the adoption of the funding im-
3 provement plan, or

4 “(ii) the first day of the first plan
5 year of the multiemployer plan following
6 the plan year in which occurs the first date
7 after the day of the certification as of
8 which collective bargaining agreements cov-
9 ering on the day of such certification at
10 least 75 percent of active participants in
11 such multiemployer plan have expired.

12 “(C) SPECIAL RULES FOR CERTAIN SERI-
13 OUSLY UNDERFUNDED PLANS.—

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

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

1 “(I) the plan actuary certifies
2 within 30 days after certification
3 under subsection (a)(1) that the plan
4 is not able to attain the increase de-
5 scribed in subparagraph (A)(i) over
6 the period described in subparagraph
7 (B), and

8 “(II) the plan year is prior to the
9 day described in subparagraph (B)(ii),
10 subparagraph (A)(i)(II) shall be applied by
11 substituting ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and subparagraph
12 (B) shall be applied by substituting ‘the
13 15-year period’ for ‘the 10-year period’.

14 “(iii) For any plan year following the
15 year described in clause (ii)(II), subpara-
16 graph (A)(i)(II) and subparagraph (B)
17 shall apply, except that for each plan year
18 ending after such date for which the plan
19 actuary certifies (at the time of the annual
20 certification under subsection (a)(1) for
21 such plan year) that the plan is not able
22 to attain the increase described in subpara-
23 graph (A)(i) over the period described in
24 subparagraph (B), subparagraph (B) shall

1 be applied by substituting ‘the 15-year pe-
2 riod’ for ‘the 10-year period’.

3 “(D) REPORTING.—A summary of any
4 funding improvement plan or modification
5 thereto adopted during any plan year, together
6 with annual updates regarding the funding
7 ratio of the plan, shall be included in the an-
8 nual report for such plan year under section
9 104(a) and in the summary annual report de-
10 scribed in section 104(b)(3).

11 “(4) DEVELOPMENT OF FUNDING IMPROVE-
12 MENT PLAN.—

13 “(A) ACTIONS BY PLAN SPONSOR PENDING
14 APPROVAL.—Pending the approval of a funding
15 improvement plan under this paragraph, the
16 plan sponsor shall take all reasonable actions,
17 consistent with the terms of the plan and appli-
18 cable law, necessary to ensure—

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

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

24 Such actions include applications for extensions
25 of amortization periods under section 304(d),

1 use of the shortfall funding method in making
2 funding standard account computations,
3 amendments to the plan's benefit structure, re-
4 ductions in future benefit accruals, and other
5 reasonable actions consistent with the terms of
6 the plan and applicable law.

7 “(B) RECOMMENDATIONS BY PLAN SPON-
8 SOR.—

9 “(i) IN GENERAL.—During the period
10 of 90 days following the date on which a
11 multiemployer plan is certified to be in en-
12 dangered status, the plan sponsor shall de-
13 velop and provide to the bargaining parties
14 alternative proposals for revised benefit
15 structures, contribution structures, or
16 both, which, if adopted as amendments to
17 the plan, may be reasonably expected to
18 meet the benchmarks described in para-
19 graph (3)(A). Such proposals shall
20 include—

21 “(I) at least one proposal for re-
22 ductions in the amount of future ben-
23 efit accruals necessary to achieve the
24 benchmarks, assuming no amend-
25 ments increasing contributions under

1 the plan (other than amendments in-
2 creasing contributions necessary to
3 achieve the benchmarks after amend-
4 ments have reduced future benefit ac-
5 cruals to the maximum extent per-
6 mitted by law), and

7 “(II) at least one proposal for in-
8 creases in contributions under the
9 plan necessary to achieve the bench-
10 marks, assuming no amendments re-
11 ducing future benefit accruals under
12 the plan.

13 “(ii) REQUESTS BY BARGAINING PAR-
14 TIES.—Upon the request of any bargaining
15 party who—

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

18 “(II) represents as an employee
19 organization, for purposes of collective
20 bargaining, at least 5 percent of the
21 active participants,

22 the plan sponsor shall provide all such par-
23 ties information as to other combinations
24 of increases in contributions and reduc-

1 tions in future benefit accruals which
2 would result in achieving the benchmarks.

3 “(iii) OTHER INFORMATION.—The
4 plan sponsor may, as it deems appropriate,
5 prepare and provide the bargaining parties
6 with additional information relating to con-
7 tribution structures or benefit structures
8 or other information relevant to the fund-
9 ing improvement plan.

10 “(5) MAINTENANCE OF CONTRIBUTIONS PEND-
11 ING APPROVAL OF FUNDING IMPROVEMENT PLAN.—
12 Pending approval of a funding improvement plan by
13 the bargaining parties with respect to a multiem-
14 ployer plan, the multiemployer plan may not be
15 amended so as to provide—

16 “(A) a reduction in the level of contribu-
17 tions for participants who are not in pay status,

18 “(B) a suspension of contributions with re-
19 spect to any period of service, or

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

23 “(6) BENEFIT RESTRICTIONS PENDING AP-
24 PROVAL OF FUNDING IMPROVEMENT PLAN.—Pend-
25 ing approval of a funding improvement plan by the

1 bargaining parties with respect to a multiemployer
2 plan—

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

9 “(B) PROHIBITION ON BENEFIT IN-
10 CREASES.—

11 “(i) IN GENERAL.—No amendment of
12 the plan which increases the liabilities of
13 the plan by reason of any increase in bene-
14 fits, any change in the accrual of benefits,
15 or any change in the rate at which benefits
16 become nonforfeitable under the plan may
17 be adopted.

18 “(ii) EXCEPTION.—Clause (i) shall
19 not apply to any plan amendment which is
20 required as a condition of qualification
21 under part I of subchapter D of chapter 1
22 of subtitle A of the Internal Revenue Code
23 of 1986.

24 “(7) DEFAULT CRITICAL STATUS IF NO FUND-
25 ING IMPROVEMENT PLAN ADOPTED.—If no plan

1 amendment adopting a funding improvement plan
2 has been adopted by the end of the 240-day period
3 referred to in subsection (b)(1), the plan enters into
4 critical status as of the first day of the succeeding
5 plan year.

6 “(8) RESTRICTIONS UPON APPROVAL OF FUND-
7 ING IMPROVEMENT PLAN.—Upon adoption of a
8 funding improvement plan with respect to a multi-
9 employer plan, the plan may not be amended—

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

12 “(B) so as to increase future benefit accru-
13 als, unless the plan actuary certifies in advance
14 that, after taking into account the proposed in-
15 crease, the plan is reasonably expected to meet
16 the the benchmarks described in paragraph
17 (3)(A).

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

20 “(1) IN GENERAL.—In any case in which a
21 multiemployer plan is in critical status for a plan
22 year as described in paragraph (2) (or otherwise en-
23 ters into critical status under this section) and no
24 rehabilitation plan under this subsection with respect
25 to such multiemployer plan is in effect for the plan

1 year, the plan sponsor shall, in accordance with this
2 subsection, amend the multiemployer plan to include
3 a rehabilitation plan under this subsection. The
4 amendment shall be adopted not later than 240 days
5 after the date on which the plan enters into critical
6 status.

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

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

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

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

20 “(A) A plan is described in this subpara-
21 graph if, as of the beginning of the current plan
22 year—

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

25 “(ii) the sum of—

1 “(I) the market value of plan as-
2 sets, plus

3 “(II) the present value of the
4 reasonably anticipated employer and
5 employee contributions for the current
6 plan year and each of the 6 suc-
7 ceeding plan years, assuming that the
8 terms of the one or more collective
9 bargaining agreements pursuant to
10 which the plan is maintained for the
11 current plan year continue in effect
12 for succeeding plan years,

13 is less than the present value of all non-
14 forfeitable benefits for all participants and
15 beneficiaries projected to be payable under
16 the plan during the current plan year and
17 each of the 6 succeeding plan years (plus
18 administrative expenses for such plan
19 years).

20 “(B) A plan is described in this subpara-
21 graph if, as of the beginning of the current plan
22 year, the sum of—

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

1 “(ii) the present value of the reason-
2 ably anticipated employer and employee
3 contributions for the current plan year and
4 each of the 4 succeeding plan years, as-
5 suming that the terms of the one or more
6 collective bargaining agreements pursuant
7 to which the plan is maintained for the
8 current plan year remain in effect for suc-
9 ceeding plan years,

10 is less than the present value of all nonforfeit-
11 able benefits for all participants and bene-
12 ficiaries projected to be payable under the plan
13 during the current plan year and each of the 4
14 succeeding plan years (plus administrative ex-
15 penses for such plan years).

16 “(C) A plan is described in this subpara-
17 graph if—

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

21 “(ii) the plan has an accumulated
22 funding deficiency for the current plan
23 year or is projected to have an accumu-
24 lated funding deficiency for any of the 4
25 succeeding plan years, not taking into ac-

1 count any extension of amortization peri-
2 ods under section 304(d).

3 “(D) A plan is described in this subpara-
4 graph if—

5 “(i)(I) the plan’s normal cost for the
6 current plan year, plus interest (deter-
7 mined at the rate used for determining
8 cost under the plan) for the current plan
9 year on the amount of unfunded benefit li-
10 abilities under the plan as of the last date
11 of the preceding plan year, exceeds

12 “(II) the present value, as of the be-
13 ginning of the current plan year, of the
14 reasonably anticipated employer and em-
15 ployee contributions for the current plan
16 year,

17 “(ii) the present value, as of the be-
18 ginning of the current plan year, of non-
19 forfeitable benefits of inactive participants
20 is greater than the present value, as of the
21 beginning of the current plan year, of non-
22 forfeitable benefits of active participants,
23 and

24 “(iii) the plan is projected to have an
25 accumulated funding deficiency for the

1 current plan year or any of the 4 suc-
2 ceeding plan years, not taking into account
3 any extension of amortization periods
4 under section 304(d).

5 “(E) A plan is described in this subpara-
6 graph if—

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

10 “(ii) the plan is projected to have an
11 accumulated funding deficiency during any
12 of the succeeding 3 plan years, not taking
13 into account any extension of amortization
14 periods under section 304(d).

15 “(4) REHABILITATION PLAN.—

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

18 “(i) amendments to the plan providing
19 (under reasonable actuarial assumptions)
20 for measures, agreed to by the bargaining
21 parties, to increase contributions, reduce
22 plan expenditures (including plan mergers
23 and consolidations), or reduce future ben-
24 efit accruals, or to take any combination of
25 such actions, determined necessary to

1 cause the plan to cease, during the reha-
2 bilitation period, to be in critical status, or
3 “(ii) reasonable measures to forestall
4 possible insolvency (within the meaning of
5 section 4245) if the plan sponsor deter-
6 mines that, upon exhaustion of all reason-
7 able measures, the plan would not cease
8 during the rehabilitation period to be in
9 critical status.

10 A rehabilitation must provide annual standards
11 for meeting the requirements of such rehabilita-
12 tion plan.

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

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

20 “(ii) the first day of the first plan
21 year of the multiemployer plan following
22 the plan year in which occurs the first
23 date, after the date of the plan’s entry into
24 critical status, as of which collective bar-
25 gaining agreements covering at least 75

1 percent of active participants in such mul-
2 tiemployer plan (determined as of such
3 date of entry) have expired.

4 “(C) REPORTING.—A summary of any re-
5 habilitation plan or modification thereto adopt-
6 ed during any plan year, together with annual
7 updates regarding the funding ratio of the plan,
8 shall be included in the annual report for such
9 plan year under section 104(a) and in the sum-
10 mary annual report described in section
11 104(b)(3).

12 “(5) DEVELOPMENT OF REHABILITATION
13 PLAN.—

14 “(A) PROPOSALS BY PLAN SPONSOR.—

15 “(i) IN GENERAL.—Within 90 days
16 after the date of entry into critical status
17 (or the date as of which the requirements
18 of subsection (b)(1) are not met with re-
19 spect to the plan), the plan sponsor shall
20 propose to all bargaining parties a range of
21 alternative schedules of increases in con-
22 tributions and reductions in future benefit
23 accruals that would serve to carry out a re-
24 habilitation plan under this subsection.

1 “(ii) PROPOSAL ASSUMING NO CON-
2 TRIBUTION INCREASES.—Such proposals
3 shall include, as one of the proposed sched-
4 ules, a schedule of those reductions in fu-
5 ture benefit accruals that would be nec-
6 essary to cause the plan to cease to be in
7 critical status if there were no further in-
8 creases in rates of contribution to the plan.

9 “(iii) PROPOSAL WHERE CONTRIBU-
10 TIONS ARE NECESSARY.—If the plan spon-
11 sor determines that the plan will not cease
12 to be in critical status during the rehabili-
13 tation period unless the plan is amended to
14 provide for an increase in contributions,
15 the plan sponsor’s proposals shall include a
16 schedule of those increases in contribution
17 rates that would be necessary to cause the
18 plan to cease to be in critical status if fu-
19 ture benefit accruals were reduced to the
20 maximum extent permitted by law.

21 “(B) REQUESTS FOR ADDITIONAL SCHED-
22 ULES.—Upon the request of any bargaining
23 party who—

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

1 “(ii) represents as an employee orga-
2 nization, for purposes of collective bar-
3 gaining, at least 5 percent of active partici-
4 pants,
5 the plan sponsor shall include among the pro-
6 posed schedules such schedules of increases in
7 contributions and reductions in future benefit
8 accruals as may be specified by the bargaining
9 parties.

10 “(C) SUBSEQUENT AMENDMENTS.—Upon
11 the adoption of a schedule of increases in con-
12 tributions or reductions in future benefit accru-
13 als as part of the rehabilitation plan, the plan
14 sponsor may amend the plan thereafter to up-
15 date the schedule to adjust for any experience
16 of the plan contrary to past actuarial assump-
17 tions, except that such an amendment may be
18 made not more than once in any 3-year period.

19 “(D) ALLOCATION OF REDUCTIONS IN FU-
20 TURE BENEFIT ACCRUALS.—Any schedule con-
21 taining reductions in future benefit accruals
22 forming a part of a rehabilitation plan shall be
23 applicable with respect to any group of active
24 participants who are employed by any bar-
25 gaining party (as an employer obligated to con-

1 tribute under the plan) in proportion to the ex-
2 tent to which increases in contributions under
3 such schedule apply to such bargaining party.

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

8 “(i) a monthly benefit equal to 1 per-
9 cent of the contributions required to be
10 made with respect to a participant or the
11 equivalent standard accrual rate for a par-
12 ticipant or group of participants under the
13 collective bargaining agreements in effect
14 as of the first day of the plan year in
15 which the plan enters critical status, or

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

18 The equivalent standard accrual rate shall be
19 determined by the trustees based on the stand-
20 ard or average contribution base units that they
21 determine to be representative for active partici-
22 pants and such other factors as they determine
23 to be relevant.

24 “(F) PROTECTION OF RESTORED RATES
25 OF ACCRUAL.—

1 “(i) IN GENERAL.—Any schedule pro-
2 posed under this paragraph shall not re-
3 duce the rate of future accruals below any
4 restored accrual rate.

5 “(ii) RESTORED ACCRUAL RATE.—For
6 purposes of clause (i), the term ‘restored
7 accrual rate’ means a rate of benefit accru-
8 als which was reduced and subsequently
9 restored before entry of the plan into crit-
10 ical status.

11 “(6) MAINTENANCE OF CONTRIBUTIONS AND
12 RESTRICTIONS ON BENEFITS PENDING ADOPTION OF
13 REHABILITATION PLAN.—The rules of paragraphs
14 (5) and (6) of subsection (b) shall apply for pur-
15 poses of this subsection by substituting the term ‘re-
16 habilitation plan’ for ‘funding improvement plan’.

17 “(7) SPECIAL RULES.—

18 “(A) AUTOMATIC EMPLOYER SUR-
19 CHARGE.—

20 “(i) 5 PERCENT AND 10 PERCENT
21 SURCHARGE.—For the first plan year in
22 which the plan is in critical status, each
23 employer otherwise obligated to make a
24 contribution for that plan year shall be ob-
25 ligated to pay to the plan a surcharge

1 equal to 5 percent of the contribution oth-
2 erwise required under the respective collec-
3 tive bargaining agreement (or other agree-
4 ment pursuant to which the employer con-
5 tributes). For each consecutive plan year
6 thereafter in which the plan is in critical
7 status, the surcharge shall be 10 percent of
8 the contribution otherwise required under
9 the respective collective bargaining agree-
10 ment (or other agreement pursuant to
11 which the employer contributes).

12 “(ii) ENFORCEMENT OF SUR-
13 CHARGE.—The surcharges under clause (i)
14 shall be due and payable on the same
15 schedule as the contributions on which
16 they are based. Any failure to make a sur-
17 charge payment shall be treated as a delin-
18 quent contribution under section 515 and
19 shall be enforceable as such.

20 “(iii) SURCHARGE TO TERMINATE
21 UPON CBA RENEGOTIATION.—The sur-
22 charge under this paragraph shall cease to
23 be effective with respect to employees cov-
24 ered by a collective bargaining agreement,

1 beginning on the date on which that agree-
2 ment is renegotiated to include—

3 “(I) a schedule of benefits and
4 contributions published by the trust-
5 ees pursuant to the plan’s rehabilita-
6 tion plan, or

7 “(II) otherwise collectively bar-
8 gained benefit changes.

9 “(iv) SURCHARGE NOT TO APPLY
10 UNTIL EMPLOYER RECEIVES 30-DAY NO-
11 TICE.—The surcharge under this subpara-
12 graph shall not apply to an employer until
13 30 days after the employer has been noti-
14 fied by the trustees that the plan is in crit-
15 ical status and that the surcharge is in ef-
16 fect.

17 “(v) SURCHARGE NOT TO GENERATE
18 INCREASED BENEFIT ACCRUALS.—Not-
19 withstanding any provision of a plan to the
20 contrary, the amount of any surcharge
21 shall not be the basis for any benefit ac-
22 cruals under the plan.

23 “(B) BENEFIT ADJUSTMENTS.—

24 “(i) IN GENERAL.—The trustees shall
25 make appropriate reductions, if any, to ad-

1 justable benefits based upon the outcome
2 of collective bargaining over the schedules
3 provided under paragraph (5).

4 “(ii) RETIREE PROTECTION.—Except
5 as provided in subparagraph (C), the trust-
6 ees of a plan in critical status may not re-
7 duce adjustable benefits of any participant
8 or beneficiary who was in pay status at
9 least one year before the first day of the
10 first plan year in which the plan enters
11 into critical status.

12 “(iii) TRUSTEE FLEXIBILITY.—The
13 trustees shall include in the schedules pro-
14 vided to the bargaining parties an allow-
15 ance for funding the benefits of partici-
16 pants with respect to whom contributions
17 are not currently required to be made, and
18 shall reduce their benefits to the extent
19 permitted under this title and considered
20 appropriate based on the plan’s then cur-
21 rent overall funding status and its future
22 prospects in light of the results of the par-
23 ties’ negotiations.

1 “(C) ADJUSTABLE BENEFIT DEFINED.—

2 For purposes of this paragraph, the term ‘ad-
3 justable benefit’ means—

4 “(i) benefits, rights, and features,
5 such as post-retirement death benefits, 60-
6 month guarantees, disability benefits not
7 yet in pay status, and similar benefits,

8 “(ii) retirement-type subsidies, early
9 retirement benefits, and benefit payment
10 options (other than the 50 percent quali-
11 fied joint-and-survivor benefit and single
12 life annuity), and

13 “(iii) benefit increases that would not
14 be eligible for a guarantee under section
15 4022A on the first day of the plan year in
16 which the plan enters into critical status
17 because they were adopted, or if later, took
18 effect less than 60 months before reorga-
19 nization.

20 “(D) NORMAL RETIREMENT BENEFITS
21 PROTECTED.—Nothing in this paragraph shall
22 be construed to permit a plan to reduce the
23 level of a participant’s accrued benefit payable
24 at normal retirement age which is not an ad-
25 justable benefit.

1 “(E) ADJUSTMENTS DISREGARDED IN
2 WITHDRAWAL LIABILITY DETERMINATION.—

3 “(i) BENEFIT REDUCTIONS.—Any
4 benefit reductions under this paragraph
5 shall be disregarded in determining a
6 plan’s unfunded vested benefits for pur-
7 poses of determining an employer’s with-
8 drawal liability under section 4201.

9 “(ii) SURCHARGES.—Any surcharges
10 under this paragraph shall be disregarded
11 in determining an employer’s withdrawal
12 liability under section 4211, except for
13 purposes of determining the unfunded vest-
14 ed benefits attributable to an employer or
15 under a modified attributable method
16 adopted with the approval of the Pension
17 Benefit Guaranty Corporation under sub-
18 section (c)(5) of that section.

19 “(8) RESTRICTIONS UPON APPROVAL OF REHA-
20 BILITATION PLAN.—Upon adoption of a rehabilita-
21 tion plan with respect to a multiemployer plan, the
22 plan may not be amended—

23 “(A) so as to be inconsistent with the re-
24 habilitation plan, or

1 “(B) so as to increase future benefit accru-
2 als, unless the plan actuary certifies in advance
3 that, after taking into account the proposed in-
4 crease, the plan is reasonably expected to cease
5 to be in critical status.

6 “(9) IMPLEMENTATION OF DEFAULT SCHED-
7 ULE UPON FAILURE TO ADOPT REHABILITATION
8 PLAN.—If the plan is not amended by the end of the
9 240-day period after entry into critical status to in-
10 clude a rehabilitation plan, the plan sponsor shall
11 amend the plan to implement the schedule required
12 by paragraph (5)(A)(ii).

13 “(10) DEEMED WITHDRAWAL.—Upon the fail-
14 ure of any employer who has an obligation to con-
15 tribute under the plan to make contributions in com-
16 pliance with the schedule adopted under paragraph
17 (4) as part of the rehabilitation plan, the failure of
18 the employer may, at the discretion of the plan spon-
19 sor, be treated as a withdrawal by the employer from
20 the plan under section 4203 or a partial withdrawal
21 by the employer under section 4205.

22 “(11) SPECIAL RULE FOR PLAN AMEND-
23 MENTS.—A multiemployer plan in critical status
24 shall not fail to meet the requirements of section
25 204(g) or section 411(d)(6) of the Internal Revenue

1 Code of 1986 solely by reason of the adoption by the
2 plan of an amendment necessary to meet the re-
3 quirements of this subsection.

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

5 “(1) BARGAINING PARTY.—The term ‘bar-
6 gaining party’ means, in connection with a multiem-
7 ployer plan—

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

10 “(B) an employee organization which, for
11 purposes of collective bargaining, represents
12 plan participants employed by such an em-
13 ployer.

14 “(2) FUNDED PERCENTAGE.—The term ‘fund-
15 ed percentage’ means the percentage expressed as a
16 ratio of which—

17 “(A) the numerator of which is the value
18 of the plan’s assets, as determined under sec-
19 tion 304(c)(2), and

20 “(B) the denominator of which is the ac-
21 crued liability of the plan.

22 “(3) ACCUMULATED FUNDING DEFICIENCY.—
23 The term ‘accumulated funding deficiency’ has the
24 meaning provided such term in section 304(a).

1 “(4) ACTIVE PARTICIPANT.—The term ‘active
2 participant’ means, in connection with a multiem-
3 ployer plan, a participant who is in covered service
4 under the plan.

5 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
6 tive participant’ means, in connection with a multi-
7 employer plan, a participant who—

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

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

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

15 “(A) at any time during the current plan
16 year, such person is a participant or beneficiary
17 under the plan and is paid an early, late, nor-
18 mal, or disability retirement benefit under the
19 plan (or a death benefit under the plan related
20 to a retirement benefit), or

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

1 “(7) OBLIGATION TO CONTRIBUTE.—The term
2 ‘obligation to contribute’ has the meaning provided
3 such term under section 4212(a).

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

10 (b) ENFORCEMENT.—Section 502 of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C. 1132)
12 is amended—

13 (1) in subsection (a)(6) by striking “(6), or
14 (7)” and inserting “(6), (7), or (8)”;

15 (2) by redesignating subsection (c)(8) as sub-
16 section (c)(9); and

17 (3) by inserting after subsection (c)(7) the fol-
18 lowing new paragraph:

19 “(8) The Secretary may assess a civil penalty
20 against—

21 “(A) any person of not more than \$1,100
22 per day for each violation by such person of
23 subsection (a)(1), (b)(1), or (c)(1) of section
24 305, or

1 Employee Retirement Income Security Act of 1974 (29
2 U.S.C. 1426(d)(1)) is amended—

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

5 (2) by adding at the end the following new sen-
6 tence: “If the plan sponsor makes such a determina-
7 tion that the plan will be insolvent in any of the next
8 5 plan years, the plan sponsor shall make the com-
9 parison under this paragraph at least annually until
10 the plan sponsor makes a determination that the
11 plan will not be insolvent in any of the next 5 plan
12 years.”.

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

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

17 (a) REPEAL OF LIMITATION ON WITHDRAWAL LI-
18 ABILITY IN THE EVENT OF CERTAIN SALES OF EM-
19 PLOYER ASSETS TO UNRELATED PARTIES.—

20 (1) IN GENERAL.—Section 4225 of the Em-
21 ployee Retirement Income Security Act of 1974 (29
22 U.S.C. 1405) is repealed.

23 (2) CONFORMING AMENDMENT.—The table of
24 contents in section 1 of such Act is amended by
25 striking the item relating to section 4225.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this section shall apply with respect to sales oc-
3 curring on or after January 1, 2006.

4 (b) REPEAL OF LIMITATION TO 20 ANNUAL PAY-
5 MENTS.—

6 (1) IN GENERAL.—Section 4219(c)(1) of such
7 Act (29 U.S.C. 1399(c)(1)) is amended by striking
8 subparagraph (B).

9 (2) EFFECTIVE DATE.—The amendment made
10 by this section shall apply with respect to with-
11 drawals occurring on or after January 1, 2006.

12 (c) WITHDRAWAL LIABILITY CONTINUES IF WORK
13 CONTRACTED OUT.—

14 (1) IN GENERAL.—Clause (i) of section
15 4205(b)(2)(A) of such Act (29 U.S.C.
16 1385(b)(2)(A)) is amended by inserting “or to an-
17 other party or parties” after “to another location”.

18 (2) EFFECTIVE DATE.—The amendment made
19 by this subsection shall apply with respect to work
20 transferred on or after the date of the enactment of
21 this Act.

22 (d) REPEAL OF SPECIAL RULE FOR LONG AND
23 SHORT HAUL TRUCKING INDUSTRY.—

24 (1) IN GENERAL.—Subsection (d) of section
25 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

1 (2) EFFECTIVE DATE.—The repeal under this
2 subsection shall apply with respect to cessations to
3 have obligations to contribute to multiemployer
4 plans and cessations of covered operations under
5 such plans occurring on or after January 1, 2006.

6 (e) APPLICATION OF FORGIVENESS RULE TO PLANS
7 PRIMARILY COVERING EMPLOYEES IN THE BUILDING
8 AND CONSTRUCTION.—

9 (1) IN GENERAL.—Section 4210(b) of such Act
10 (29 U.S.C. 1390(b)) is amended—

11 (A) by striking paragraph (1); and

12 (B) by redesignating paragraphs (2)
13 through (4) as paragraphs (1) through (3), re-
14 spectively.

15 (2) EFFECTIVE DATE.—The amendments made
16 by this subsection shall apply with respect to plan
17 withdrawals occurring on or after January 1, 2006.

18 **SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO**
19 **PROCEDURES APPLICABLE TO DISPUTES IN-**
20 **VOLVING WITHDRAWAL LIABILITY.**

21 (a) IN GENERAL.—Section 4221(f)(1) of the Em-
22 ployee Retirement Income Security Act of 1974 (29
23 U.S.C. 1401(f)(1)) is amended—

24 (1) in subparagraph (A) by inserting “and”
25 after “plan,” and

1 (2) by striking subparagraphs (B) and (C) and
2 inserting the following new subparagraph:

3 “(B) such determination is based in whole
4 or in part on a finding by the plan sponsor
5 under section 4212(c) that a principal purpose
6 of any transaction which occurred at least 5
7 years (2 years in the case of a small employer)
8 before the date of the complete or partial with-
9 drawal was to evade or avoid withdrawal liabil-
10 ity under this subtitle.”.

11 (b) SMALL EMPLOYER.—Paragraph (2) of section
12 4221(f) of such Act is amended by adding at the end the
13 following new subparagraph:

14 “(C) SMALL EMPLOYER.—For purposes of
15 paragraph (1)(B)—

16 “(i) IN GENERAL.—The term ‘small
17 employer’ means any employer who (as of
18 immediately before the transaction referred
19 to in paragraph (1)(B))—

20 “(I) employs not more than 500
21 employees, and

22 “(II) is required to make con-
23 tributions to the plan for not more
24 than 250 employees.

1 “(ii) CONTROLLED GROUP.—Any
2 group treated as a single employer under
3 subsection (b), (c), (m), or (o) of section
4 414 of the Internal Revenue Code of 1986
5 shall be treated as a single employer for
6 purposes of this subparagraph.”.

7 (c) ADDITIONAL AMENDMENTS.—

8 (1) Subparagraph (A) of section 4221(f)(2) of
9 such Act (29 U.S.C. 1401(f)(2)) is amended by
10 striking “Notwithstanding” and inserting “In the
11 case of a transaction occurring before January 1,
12 1999, and at least 5 years before the date of the
13 complete or partial withdrawal, notwithstanding”.

14 (2) Section 4221(f)(2)(B) of such Act (29
15 U.S.C. 1401(f)(2)(B)) is amended—

16 (A) by inserting “with respect to with-
17 drawal liability payments” after “determina-
18 tion” the first place it appears, and

19 (B) by striking “any” and inserting “the”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to any employer that receives a
22 notification under section 4219(b)(1) of the Employee Re-
23 tirement Income Security Act of 1974 on or after the date
24 of the enactment of this Act.

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

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

5 (a) IN GENERAL.—Subpart A of part III of sub-
6 chapter D of chapter 1 of the Internal Revenue Code of
7 1986 (added by section 112 of this Act) is amended by
8 adding at the end the following new section:

9 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**
10 **PLOYER PLANS.**

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

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

21 “(2) if the multiemployer plan is in reorganiza-
22 tion for any plan year, the accumulated funding de-
23 ficiency of the plan determined under section 418B.

24 “(b) FUNDING STANDARD ACCOUNT.—

1 “(1) ACCOUNT REQUIRED.—Each multiem-
2 ployer plan to which section 412 applies shall estab-
3 lish and maintain a funding standard account. Such
4 account shall be credited and charged solely as pro-
5 vided in this section.

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

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

11 “(B) the amounts necessary to amortize in
12 equal annual installments (until fully amor-
13 tized)—

14 “(i) in the case of a plan in existence
15 on January 1, 1974, the unfunded past
16 service liability under the plan on the first
17 day of the first plan year to which section
18 412 applies, over a period of 40 plan years,

19 “(ii) in the case of a plan which comes
20 into existence after January 1, 1974, the
21 unfunded past service liability under the
22 plan on the first day of the first plan year
23 to which section 412 applies, over a period
24 of 15 plan years,

1 “(iii) 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 “(iv) 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 “(v) 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 2005), 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 2005).

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 2005), 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 RULES FOR PRE-2007 AMORTIZA-
2 TIONS.—

3 “(A) IN GENERAL.—In the case of any
4 amount amortized under section 412(b) (as in
5 effect on the day before the date of the enact-
6 ment of the Pension Protection Act of 2005)
7 over any period beginning with a plan year be-
8 ginning before 2007, in lieu of the amortization
9 described in paragraphs (2)(B) and (3)(B),
10 such amount shall continue to be amortized
11 under such section as so in effect.

12 “(B) INTEREST RATE.—For purposes of
13 amortizations under section 412(b) (as in effect
14 on the day before the date of the enactment of
15 the Pension Protection Act of 2005), in the
16 case of any waiver under section 412(d) (as so
17 in effect) or extension under section 412(e) (as
18 so in effect) with respect to which application
19 has been made before June 30, 2005, the inter-
20 est rate under section 412(d)(1)(A) (as so in ef-
21 fect) or section 412(e) (as so in effect), as the
22 case may be, shall apply.

23 “(5) COMBINING AND OFFSETTING AMOUNTS
24 TO BE AMORTIZED.—Under regulations prescribed
25 by the Secretary, amounts required to be amortized

1 under paragraph (2) or paragraph (3), as the case
2 may be—

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

8 “(B) may be offset against amounts re-
9 quired to be amortized under the other such
10 paragraph, with the resulting amount to be am-
11 ortized over a period determined on the basis of
12 the remaining amortization periods for all items
13 entering into whichever of the two amounts
14 being offset is the greater.

15 “(6) INTEREST.—Except as provided in sub-
16 section (c)(9), the funding standard account (and
17 items therein) shall be charged or credited (as deter-
18 mined under regulations prescribed by the Sec-
19 retary) with interest at the appropriate rate con-
20 sistent with the rate or rates of interest used under
21 the plan to determine costs.

22 “(7) CERTAIN AMORTIZATION CHARGES AND
23 CREDITS.—In the case of a plan which, immediately
24 before the date of the enactment of the Multiem-
25 ployer Pension Plan Amendments Act of 1980, was

1 a multiemployer plan (within the meaning of section
2 414(f) as in effect immediately before such date)—

3 “(A) any amount described in paragraph
4 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-
5 section which arose in a plan year beginning be-
6 fore such date shall be amortized in equal an-
7 nual installments (until fully amortized) over 40
8 plan years, beginning with the plan year in
9 which the amount arose,

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

17 “(C) any change in past service liability
18 which arises during the period of 3 plan years
19 beginning on or after such date, and results
20 from a plan amendment adopted before such
21 date, shall be amortized in equal annual install-
22 ments (until fully amortized) over 40 plan
23 years, beginning with the plan year in which the
24 change arises, and

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

7 “(i) was adopted before such date,
8 and

9 “(ii) was effective for any plan partici-
10 pant before the beginning of the first plan
11 year beginning on or after such date,
12 shall be amortized in equal annual installments
13 (until fully amortized) over 40 plan years, be-
14 ginning with the plan year in which the change
15 arises.

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

19 “(A) WITHDRAWAL LIABILITY.—Any
20 amount received by a multiemployer plan in
21 payment of all or part of an employer’s with-
22 drawal liability under part 1 of subtitle E of
23 title IV of the Employee Retirement Income Se-
24 curity Act of 1974 shall be considered an
25 amount contributed by the employer to or

1 under the plan. The Secretary may prescribe by
2 regulation additional charges and credits to a
3 multiemployer plan's funding standard account
4 to the extent necessary to prevent withdrawal li-
5 ability payments from being unduly reflected as
6 advance funding for plan liabilities.

7 “(B) ADJUSTMENTS WHEN A MULTIEM-
8 PLOYER PLAN LEAVES REORGANIZATION.—If a
9 multiemployer plan is not in reorganization in
10 the plan year but was in reorganization in the
11 immediately preceding plan year, any balance in
12 the funding standard account at the close of
13 such immediately preceding plan year—

14 “(i) shall be eliminated by an offset-
15 ting credit or charge (as the case may be),
16 but

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

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

1 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
2 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
3 FUND.—Any amount paid by a plan during a
4 plan year to the Pension Benefit Guaranty Cor-
5 poration pursuant to section 4222 of the Em-
6 ployee Retirement Income Security Act of 1974
7 or to a fund exempt under section 501(c)(22)
8 pursuant to section 4223 of such Act shall re-
9 duce the amount of contributions considered re-
10 ceived by the plan for the plan year.

11 “(D) INTERIM WITHDRAWAL LIABILITY
12 PAYMENTS.—Any amount paid by an employer
13 pending a final determination of the employer’s
14 withdrawal liability under part 1 of subtitle E
15 of title IV of such Act and subsequently re-
16 funded to the employer by the plan shall be
17 charged to the funding standard account in ac-
18 cordance with regulations prescribed by the
19 Secretary.

20 “(E) ELECTION FOR DEFERRAL OF
21 CHARGE FOR PORTION OF NET EXPERIENCE
22 LOSS.—If an election is in effect under section
23 412(b)(7)(F) (as in effect on the day before the
24 date of the enactment of the Pension Protection
25 Act of 2005) for any plan year, the funding

1 standard account shall be charged in the plan
2 year to which the portion of the net experience
3 loss deferred by such election was deferred with
4 the amount so deferred (and paragraph
5 (2)(B)(iv) shall not apply to the amount so
6 charged).

7 “(F) FINANCIAL ASSISTANCE.—Any
8 amount of any financial assistance from the
9 Pension Benefit Guaranty Corporation to any
10 plan, and any repayment of such amount, shall
11 be taken into account under this section and
12 section 412 in such manner as is determined by
13 the Secretary.

14 “(G) SHORT-TERM BENEFITS.—To the ex-
15 tent that any plan amendment increases the un-
16 funded past service liability under the plan by
17 reason of an increase in benefits which are pay-
18 able under the plan during a period that does
19 not exceed 14 years, paragraph (2)(B)(iii) shall
20 be applied separately with respect to such in-
21 crease in unfunded past service liability by sub-
22 stituting the number of years of the period dur-
23 ing which such benefits are payable for ‘15’.

24 “(c) ADDITIONAL RULES.—

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

7 “(2) VALUATION OF ASSETS.—

8 “(A) IN GENERAL.—For purposes of this
9 section, the value of the plan’s assets shall be
10 determined on the basis of any reasonable actu-
11 arial method of valuation which takes into ac-
12 count fair market value and which is permitted
13 under regulations prescribed by the Secretary.

14 “(B) ELECTION WITH RESPECT TO
15 BONDS.—The value of a bond or other evidence
16 of indebtedness which is not in default as to
17 principal or interest may, at the election of the
18 plan administrator, be determined on an amor-
19 tized basis running from initial cost at purchase
20 to par value at maturity or earliest call date.
21 Any election under this subparagraph shall be
22 made at such time and in such manner as the
23 Secretary shall by regulations provide, shall
24 apply to all such evidences of indebtedness, and

1 may be revoked only with the consent of the
2 Secretary.

3 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
4 SONABLE.—For purposes of this section, all costs, li-
5 abilities, rates of interest, and other factors under
6 the plan shall be determined on the basis of actu-
7 arial assumptions and methods—

8 “(A) each of which is reasonable (taking
9 into account the experience of the plan and rea-
10 sonable expectations), and

11 “(B) which, in combination, offer the actu-
12 ary’s best estimate of anticipated experience
13 under the plan.

14 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
15 PERIENCE GAIN OR LOSS.—For purposes of this sec-
16 tion, if—

17 “(A) a change in benefits under the Social
18 Security Act or in other retirement benefits cre-
19 ated under Federal or State law, or

20 “(B) a change in the definition of the term
21 ‘wages’ under section 3121, or a change in the
22 amount of such wages taken into account under
23 regulations prescribed for purposes of section
24 401(a)(5),

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

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

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

10 “(B) all amounts described in subpara-
11 graphs (B), (C), and (D) of subsection (b)(2)
12 and subparagraph (B) of subsection (b)(3)
13 which are required to be amortized shall be con-
14 sidered fully amortized for purposes of such
15 subparagraphs.

16 “(6) FULL-FUNDING LIMITATION.—

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

20 “(i) the accrued liability (including
21 normal cost) under the plan (determined
22 under the entry age normal funding meth-
23 od if such accrued liability cannot be di-
24 rectly calculated under the funding method
25 used for the plan), over

1 “(ii) the lesser of—

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

4 “(II) the value of such assets de-
5 termined under paragraph (2).

6 “(B) MINIMUM AMOUNT.—

7 “(i) IN GENERAL.—In no event shall
8 the full-funding limitation determined
9 under subparagraph (A) be less than the
10 excess (if any) of—

11 “(I) 90 percent of the current li-
12 ability of the plan (including the ex-
13 pected increase in current liability due
14 to benefits accruing during the plan
15 year), over

16 “(II) the value of the plan’s as-
17 sets determined under paragraph (2).

18 “(ii) ASSETS.—For purposes of clause
19 (i), assets shall not be reduced by any
20 credit balance in the funding standard ac-
21 count.

22 “(C) FULL FUNDING LIMITATION.—For
23 purposes of this paragraph, unless otherwise
24 provided by the plan, the accrued liability under
25 a multiemployer plan shall not include benefits

1 which are not nonforfeitable under the plan
2 after the termination of the plan (taking into
3 consideration section 411(d)(3)).

4 “(D) CURRENT LIABILITY.—For purposes
5 of this paragraph—

6 “(i) IN GENERAL.—The term ‘current
7 liability’ means all liabilities to employees
8 and their beneficiaries under the plan.

9 “(ii) TREATMENT OF UNPREDICTABLE
10 CONTINGENT EVENT BENEFITS.—For pur-
11 poses of clause (i), any benefit contingent
12 on an event other than—

13 “(I) age, service, compensation,
14 death, or disability, or

15 “(II) an event which is reason-
16 ably and reliably predictable (as deter-
17 mined by the Secretary),

18 shall not be taken into account until the
19 event on which the benefit is contingent oc-
20 curs.

21 “(iii) INTEREST RATE USED.—The
22 rate of interest used to determine current
23 liability under this paragraph shall be the
24 rate of interest determined under subpara-
25 graph (E).

1 “(iv) MORTALITY TABLES.—

2 “(I) COMMISSIONERS’ STANDARD
3 TABLE.—In the case of plan years be-
4 ginning before the first plan year to
5 which the first tables prescribed under
6 subclause (II) apply, the mortality
7 table used in determining current li-
8 ability under this paragraph shall be
9 the table prescribed by the Secretary
10 which is based on the prevailing com-
11 missioners’ standard table (described
12 in section 807(d)(5)(A)) used to de-
13 termine reserves for group annuity
14 contracts issued on January 1, 1993.

15 “(II) SECRETARIAL AUTHOR-
16 ITY.—The Secretary may by regula-
17 tion prescribe for plan years beginning
18 after December 31, 1999, mortality
19 tables to be used in determining cur-
20 rent liability under this subsection.
21 Such tables shall be based upon the
22 actual experience of pension plans and
23 projected trends in such experience.
24 In prescribing such tables, the Sec-
25 retary shall take into account results

1 of available independent studies of
2 mortality of individuals covered by
3 pension plans.

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

7 “(I) IN GENERAL.—In the case
8 of plan years beginning after Decem-
9 ber 31, 1995, the Secretary shall es-
10 tablish mortality tables which may be
11 used (in lieu of the tables under
12 clause (iv)) to determine current li-
13 ability under this subsection for indi-
14 viduals who are entitled to benefits
15 under the plan on account of dis-
16 ability. The Secretary shall establish
17 separate tables for individuals whose
18 disabilities occur in plan years begin-
19 ning before January 1, 1995, and for
20 individuals whose disabilities occur in
21 plan years beginning on or after such
22 date.

23 “(II) SPECIAL RULE FOR DIS-
24 ABILITIES OCCURRING AFTER 1994.—
25 In the case of disabilities occurring in

1 plan years beginning after December
2 31, 1994, the tables under subclause
3 (I) shall apply only with respect to in-
4 dividuals described in such subclause
5 who are disabled within the meaning
6 of title II of the Social Security Act
7 and the regulations thereunder.

8 “(vi) PERIODIC REVIEW.—The Sec-
9 retary shall periodically (at least every 5
10 years) review any tables in effect under
11 this subparagraph and shall, to the extent
12 the Secretary determines necessary, by
13 regulation update the tables to reflect the
14 actual experience of pension plans and pro-
15 jected trends in such experience.

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

20 “(i) IN GENERAL.—If any rate of in-
21 terest used under the plan under sub-
22 section (b)(6) to determine cost is not
23 within the permissible range, the plan shall
24 establish a new rate of interest within the
25 permissible range.

1 “(ii) PERMISSIBLE RANGE.—For pur-
2 poses of this subparagraph—

3 “(I) IN GENERAL.—Except as
4 provided in subclause (II), the term
5 ‘permissible range’ means a rate of in-
6 terest which is not more than 5 per-
7 cent above, and not more than 10 per-
8 cent below, the weighted average of
9 the rates of interest on 30-year Treas-
10 ury securities during the 4-year period
11 ending on the last day before the be-
12 ginning of the plan year.

13 “(II) SECRETARIAL AUTHOR-
14 ITY.—If the Secretary finds that the
15 lowest rate of interest permissible
16 under subclause (I) is unreasonably
17 high, the Secretary may prescribe a
18 lower rate of interest, except that
19 such rate may not be less than 80
20 percent of the average rate deter-
21 mined under such subclause.

22 “(iii) ASSUMPTIONS.—Notwith-
23 standing paragraph (3)(A), the interest
24 rate used under the plan shall be—

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

4 “(II) consistent with the assump-
5 tions which reflect the purchase rates
6 which would be used by insurance
7 companies to satisfy the liabilities
8 under the plan.

9 “(7) ANNUAL VALUATION.—

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

18 “(B) VALUATION DATE.—

19 “(i) CURRENT YEAR.—Except as pro-
20 vided in clause (ii), the valuation referred
21 to in subparagraph (A) shall be made as of
22 a date within the plan year to which the
23 valuation refers or within one month prior
24 to the beginning of such year.

1 “(ii) USE OF PRIOR YEAR VALU-
2 ATION.—The valuation referred to in sub-
3 paragraph (A) may be made as of a date
4 within the plan year prior to the year to
5 which the valuation refers if, as of such
6 date, the value of the assets of the plan are
7 not less than 100 percent of the plan’s cur-
8 rent liability (as defined in paragraph
9 (6)(D) without regard to clause (iv) there-
10 of).

11 “(iii) ADJUSTMENTS.—Information
12 under clause (ii) shall, in accordance with
13 regulations, be actuarially adjusted to re-
14 flect significant differences in participants.

15 “(iv) LIMITATION.—A change in fund-
16 ing method to use a prior year valuation,
17 as provided in clause (ii), may not be made
18 unless as of the valuation date within the
19 prior plan year, the value of the assets of
20 the plan are not less than 125 percent of
21 the plan’s current liability (as defined in
22 paragraph (6)(D) without regard to clause
23 (iv) thereof).

24 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
25 DEEMED MADE.—For purposes of this section, any

1 contributions for a plan year made by an employer
2 after the last day of such plan year, but not later
3 than two and one-half months after such day, shall
4 be deemed to have been made on such last day. For
5 purposes of this subparagraph, such two and one-
6 half month period may be extended for not more
7 than six months under regulations prescribed by the
8 Secretary.

9 “(9) INTEREST RULE FOR WAIVERS AND EX-
10 TENSIONS.—The interest rate applicable for any
11 plan year for purposes of computing the amortiza-
12 tion charge described in subsection (b)(2)(C) and in
13 connection with an extension granted under sub-
14 section (d) shall be the greater of—

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

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

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

23 “(1) EXTENSION.—The period of years re-
24 quired to amortize any unfunded liability (described
25 in any clause of subsection (b)(2)(B)) of any multi-

1 employer plan shall be extended by the Secretary for
2 a period of time (not in excess of 5 years) if it is
3 demonstrated to the Secretary that—

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

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

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

13 “(2) ADDITIONAL EXTENSION.—The period of
14 years required to amortize any unfunded liability
15 (described in any clause of subsection (b)(2)(B)) of
16 any multiemployer plan may be extended (in addi-
17 tion to any extension under paragraph (1)) by the
18 Secretary for a period of time (not in excess of 5
19 years) if the Secretary determines that such exten-
20 sion would carry out the purposes of the Employee
21 Retirement Income Security Act of 1974 and would
22 provide adequate protection for participants under
23 the plan and their beneficiaries and if the Secretary
24 determines that the failure to permit such extension
25 would—

1 “(A) result in—

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

4 “(ii) a substantial curtailment of pen-
5 sion benefit levels or employee compensa-
6 tion, and

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

9 “(3) ADVANCE NOTICE.—

10 “(A) IN GENERAL.—The Secretary shall,
11 before granting an extension under this section,
12 require each applicant to provide evidence satis-
13 factory to the Secretary that the applicant has
14 provided notice of the filing of the application
15 for such extension to each affected party (as de-
16 fined in section 4001(a)(21) of the Employee
17 Retirement Income Security Act of 1974) with
18 respect to the affected plan. Such notice shall
19 include a description of the extent to which the
20 plan is funded for benefits which are guaran-
21 teed under title IV of such Act and for benefit
22 liabilities.

23 “(B) CONSIDERATION OF RELEVANT IN-
24 FORMATION.—The Secretary shall consider any

1 relevant information provided by a person to
2 whom notice was given under paragraph (1).”.

3 (b) CONFORMING AMENDMENTS.—

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

6 (A) by striking “section 412(b)(2)” in sub-
7 paragraph (A) and inserting “section
8 431(b)(2)”, and

9 (B) by striking “section 412(b)(3)(B)” in
10 subparagraph (B) and inserting “section
11 431(b)(3)(B)”.

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

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

16 (B) by striking “section 412(c)(8)” in sub-
17 section (e) and inserting “section 412(d)(2)”,
18 and

19 (C) by striking “section 412(c)(3)” in sub-
20 section (g) and inserting “section 431(c)(3)”.

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

23 (A) by striking “section 412(c)(8)” and in-
24 serting “section 412(d)(2)”, and

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

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

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

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to plan years beginning after De-
9 cember 31, 2006.

10 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**
11 **PLOYER PLANS IN ENDANGERED OR CRIT-**
12 **ICAL STATUS.**

13 (a) IN GENERAL.—Subpart A of part III of sub-
14 chapter D of chapter 1 of the Internal Revenue Code of
15 1986 is amended by inserting after section 431 the fol-
16 lowing new section:

17 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**
18 **PLOYER PLANS IN ENDANGERED STATUS OR**
19 **CRITICAL STATUS.**

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

21 “(1) IN GENERAL.—During the 90-day period
22 beginning on first day of each plan year of a multi-
23 employer plan, the plan actuary shall certify to the
24 Secretary whether or not the plan is in endangered

1 status for such plan year and whether or not the
2 plan is in critical status for such plan year.

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

5 “(A) IN GENERAL.—In making the deter-
6 minations under paragraph (1), the plan actu-
7 ary shall make projections under subsections
8 (b)(2) and (c)(2) for the current and succeeding
9 plan years, using reasonable actuarial assump-
10 tions and methods, of the current value of the
11 assets of the plan and the present value of all
12 liabilities to participants and beneficiaries under
13 the plan for the current plan year as of the be-
14 ginning of such year, as based on the actuarial
15 statement prepared for the preceding plan year
16 under section 103(d) of the Employee Retirement
17 Income Security Act of 1974.

18 “(B) DETERMINATIONS OF FUTURE CON-
19 TRIBUTIONS.—Any such actuarial projection of
20 plan assets shall assume—

21 “(i) reasonably anticipated employer
22 and employee contributions for the current
23 and succeeding plan years, assuming that
24 the terms of the one or more collective bar-
25 gaining agreements pursuant to which the

1 plan is maintained for the current plan
2 year continue in effect for succeeding plan
3 years, or

4 “(ii) that employer and employee con-
5 tributions for the most recent plan year
6 will continue indefinitely, but only if the
7 plan actuary determines there have been
8 no significant demographic changes that
9 would make continued application of such
10 terms unreasonable.

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

18 “(4) NOTICE.—In any case in which a multiem-
19 ployer plan is certified to be in endangered status
20 under paragraph (1) or enters into critical status,
21 the plan sponsor shall, not later than 30 days after
22 the date of the certification or entry, provide notifi-
23 cation of the endangered or critical status to the
24 participants and beneficiaries, the bargaining par-
25 ties, the Pension Benefit Guaranty Corporation, the

1 Secretary of the Treasury, and the Secretary of
2 Labor.

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

5 “(1) IN GENERAL.—In any case in which a
6 multiemployer plan is in endangered status for a
7 plan year and no funding improvement plan under
8 this subsection with respect to such multiemployer
9 plan is in effect for the plan year, the plan sponsor
10 shall, in accordance with this subsection, amend the
11 multiemployer plan to include a funding improve-
12 ment plan upon approval thereof by the bargaining
13 parties under this subsection. The amendment shall
14 be adopted not later than 240 days after the date
15 on which the plan is certified to be in endangered
16 status under subsection (a)(1).

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

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

23 “(B) the plan has an accumulated funding
24 deficiency for such plan year under section 431
25 or is projected to have such an accumulated

1 funding deficiency for any of the 6 succeeding
2 plan years, taking into account any extension of
3 amortization periods under section 431(d).

4 “(3) FUNDING IMPROVEMENT PLAN.—

5 “(A) BENCHMARKS.—A funding improve-
6 ment plan shall consist of amendments to the
7 plan formulated to provide, under reasonable
8 actuarial assumptions, for the attainment, dur-
9 ing the funding improvement period under the
10 funding improvement plan, of the following
11 benchmarks:

12 “(i) INCREASE IN FUNDED PERCENT-
13 AGE.—An increase in the plan’s funded
14 percentage such that—

15 “(I) the difference between 100
16 percent and the plan’s funded per-
17 centage for the last year of the fund-
18 ing improvement period, is not more
19 than

20 “(II) $\frac{2}{3}$ of the difference between
21 100 percent and the plan’s funded
22 percentage for the first year of the
23 funding improvement period.

24 “(ii) AVOIDANCE OF ACCUMULATED
25 FUNDING DEFICIENCIES.—No accumulated

1 funding deficiency for any plan year during
2 the funding improvement period (taking
3 into account any extension of amortization
4 periods under section 431(d)).

5 “(B) FUNDING IMPROVEMENT PERIOD.—

6 The funding improvement period for any fund-
7 ing improvement plan adopted pursuant to this
8 subsection is the 10-year period beginning on
9 the earlier of—

10 “(i) the second anniversary of the
11 date of the adoption of the funding im-
12 provement plan, or

13 “(ii) the first day of the first plan
14 year of the multiemployer plan following
15 the plan year in which occurs the first date
16 after the day of the certification as of
17 which collective bargaining agreements cov-
18 ering on the day of such certification at
19 least 75 percent of active participants in
20 such multiemployer plan have expired.

21 “(C) SPECIAL RULES FOR CERTAIN SERI-
22 OUSLY UNDERFUNDED PLANS.—

23 “(i) In the case of a plan in which the
24 funded percentage of a plan for the plan
25 year is 70 percent or less, subparagraph

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

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

9 “(I) the plan actuary certifies
10 within 30 days after certification
11 under subsection (a)(1) that the plan
12 is not able to attain the increase de-
13 scribed in subparagraph (A)(i) over
14 the period described in subparagraph
15 (B), and

16 “(II) the plan year is prior to the
17 day described in subparagraph (B)(ii),
18 subparagraph (A)(i)(II) shall be applied by
19 substituting ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and subparagraph
20 (B) shall be applied by substituting ‘the
21 15-year period’ for ‘the 10-year period’.

22 “(iii) For any plan year following the
23 year described in clause (ii)(II), subpara-
24 graph (A)(i)(II) and subparagraph (B)
25 shall apply, except that for each plan year

1 ending after such date for which the plan
2 actuary certifies (at the time of the annual
3 certification under subsection (a)(1) for
4 such plan year) that the plan is not able
5 to attain the increase described in subpara-
6 graph (A)(i) over the period described in
7 subparagraph (B), subparagraph (B) shall
8 be applied by substituting ‘the 15-year pe-
9 riod’ for ‘the 10-year period’.

10 “(D) REPORTING.—A summary of any
11 funding improvement plan or modification
12 thereto adopted during any plan year, together
13 with annual updates regarding the funding
14 ratio of the plan, shall be included in the an-
15 nual report for such plan year under section
16 104(a) of the Employee Retirement Income Se-
17 curity Act of 1974 and in the summary annual
18 report described in section 104(b)(3) of such
19 Act.

20 “(4) DEVELOPMENT OF FUNDING IMPROVE-
21 MENT PLAN.—

22 “(A) ACTIONS BY PLAN SPONSOR PENDING
23 APPROVAL.—Pending the approval of a funding
24 improvement plan under this paragraph, the
25 plan sponsor shall take all reasonable actions,

1 consistent with the terms of the plan and appli-
2 cable law, necessary to ensure—

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

16 “(B) RECOMMENDATIONS BY PLAN SPON-
17 SOR.—

18 “(i) IN GENERAL.—During the period
19 of 90 days following the date on which a
20 multiemployer plan is certified to be in en-
21 dangered status, the plan sponsor shall de-
22 velop and provide to the bargaining parties
23 alternative proposals for revised benefit
24 structures, contribution structures, or
25 both, which, if adopted as amendments to

1 the plan, may be reasonably expected to
2 meet the benchmarks described in para-
3 graph (3)(A). Such proposals shall
4 include—

5 “(I) at least one proposal for re-
6 ductions in the amount of future ben-
7 efit accruals necessary to achieve the
8 benchmarks, assuming no amend-
9 ments increasing contributions under
10 the plan (other than amendments in-
11 creasing contributions necessary to
12 achieve the benchmarks after amend-
13 ments have reduced future benefit ac-
14 cruals to the maximum extent per-
15 mitted by law), and

16 “(II) at least one proposal for in-
17 creases in contributions under the
18 plan necessary to achieve the bench-
19 marks, assuming no amendments re-
20 ducing future benefit accruals under
21 the plan.

22 “(ii) REQUESTS BY BARGAINING PAR-
23 TIES.—Upon the request of any bargaining
24 party who—

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

3 “(II) represents as an employee
4 organization, for purposes of collective
5 bargaining, at least 5 percent of the
6 active participants,

7 the plan sponsor shall provide all such par-
8 ties information as to other combinations
9 of increases in contributions and reduc-
10 tions in future benefit accruals which
11 would result in achieving the benchmarks.

12 “(iii) OTHER INFORMATION.—The
13 plan sponsor may, as it deems appropriate,
14 prepare and provide the bargaining parties
15 with additional information relating to con-
16 tribution structures or benefit structures
17 or other information relevant to the fund-
18 ing improvement plan.

19 “(5) MAINTENANCE OF CONTRIBUTIONS PEND-
20 ING APPROVAL OF FUNDING IMPROVEMENT PLAN.—
21 Pending approval of a funding improvement plan by
22 the bargaining parties with respect to a multiem-
23 ployer plan, the multiemployer plan may not be
24 amended so as to provide—

1 “(A) a reduction in the level of contribu-
2 tions for participants who are not in pay status,

3 “(B) a suspension of contributions with re-
4 spect to any period of service, or

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

8 “(6) BENEFIT RESTRICTIONS PENDING AP-
9 PROVAL OF FUNDING IMPROVEMENT PLAN.—Pend-
10 ing approval of a funding improvement plan by the
11 bargaining parties with respect to a multiemployer
12 plan—

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

19 “(B) PROHIBITION ON BENEFIT IN-
20 CREASES.—

21 “(i) IN GENERAL.—No amendment of
22 the plan which increases the liabilities of
23 the plan by reason of any increase in bene-
24 fits, any change in the accrual of benefits,
25 or any change in the rate at which benefits

1 become nonforfeitable under the plan may
2 be adopted.

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

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

15 “(8) RESTRICTIONS UPON APPROVAL OF FUND-
16 ING IMPROVEMENT PLAN.—Upon adoption of a
17 funding improvement plan with respect to a multi-
18 employer plan, the plan may not be amended—

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

21 “(B) so as to increase future benefit accru-
22 als, unless the plan actuary certifies in advance
23 that, after taking into account the proposed in-
24 crease, the plan is reasonably expected to meet

1 the the benchmarks described in paragraph
2 (3)(A).

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

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

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

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

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

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

5 “(A) A plan is described in this subpara-
6 graph if, as of the beginning of the current plan
7 year—

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

10 “(ii) the sum of—

11 “(I) the market value of plan as-
12 sets, plus

13 “(II) the present value of the
14 reasonably anticipated employer and
15 employee contributions for the current
16 plan year and each of the 6 suc-
17 ceeding plan years, assuming that the
18 terms of the one or more collective
19 bargaining agreements pursuant to
20 which the plan is maintained for the
21 current plan year continue in effect
22 for succeeding plan years,

23 is less than the present value of all non-
24 forfeitable benefits for all participants and
25 beneficiaries projected to be payable under

1 the plan during the current plan year and
2 each of the 6 succeeding plan years (plus
3 administrative expenses for such plan
4 years).

5 “(B) A plan is described in this subpara-
6 graph if, as of the beginning of the current plan
7 year, the sum of—

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

10 “(ii) the present value of the reason-
11 ably anticipated employer and employee
12 contributions for the current plan year and
13 each of the 4 succeeding plan years, as-
14 suming that the terms of the one or more
15 collective bargaining agreements pursuant
16 to which the plan is maintained for the
17 current plan year remain in effect for suc-
18 ceeding plan years,

19 is less than the present value of all nonforfeit-
20 able benefits for all participants and bene-
21 ficiaries projected to be payable under the plan
22 during the current plan year and each of the 4
23 succeeding plan years (plus administrative ex-
24 penses for such plan years).

1 “(C) A plan is described in this subpara-
2 graph if—

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

6 “(ii) the plan has an accumulated
7 funding deficiency for the current plan
8 year or is projected to have an accumu-
9 lated funding deficiency for any of the 4
10 succeeding plan years, not taking into ac-
11 count any extension of amortization peri-
12 ods under section 431(d).

13 “(D) A plan is described in this subpara-
14 graph if—

15 “(i)(I) the plan’s normal cost for the
16 current plan year, plus interest (deter-
17 mined at the rate used for determining
18 cost under the plan) for the current plan
19 year on the amount of unfunded benefit li-
20 abilities under the plan as of the last date
21 of the preceding plan year, exceeds

22 “(II) the present value, as of the be-
23 ginning of the current plan year, of the
24 reasonably anticipated employer and em-

1 ployee contributions for the current plan
2 year,

3 “(ii) the present value, as of the be-
4 ginning of the current plan year, of non-
5 forfeitable benefits of inactive participants
6 is greater than the present value, as of the
7 beginning of the current plan year, of non-
8 forfeitable benefits of active participants,
9 and

10 “(iii) the plan is projected to have an
11 accumulated funding deficiency for the
12 current plan year or any of the 4 suc-
13 ceeding plan years, not taking into account
14 any extension of amortization periods
15 under section 431(d).

16 “(E) A plan is described in this subpara-
17 graph if—

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

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

1 “(4) REHABILITATION PLAN.—

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

4 “(i) amendments to the plan providing
5 (under reasonable actuarial assumptions)
6 for measures, agreed to by the bargaining
7 parties, to increase contributions, reduce
8 plan expenditures (including plan mergers
9 and consolidations), or reduce future ben-
10 efit accruals, or to take any combination of
11 such actions, determined necessary to
12 cause the plan to cease, during the reha-
13 bilitation period, to be in critical status, or

14 “(ii) reasonable measures to forestall
15 possible insolvency (within the meaning of
16 section 418E) if the plan sponsor deter-
17 mines that, upon exhaustion of all reason-
18 able measures, the plan would not cease
19 during the rehabilitation period to be in
20 critical status.

21 A rehabilitation must provide annual standards
22 for meeting the requirements of such rehabilita-
23 tion plan.

24 “(B) REHABILITATION PERIOD.—The re-
25 habilitation period for any rehabilitation plan

1 adopted pursuant to this subsection is the 10-
2 year period beginning on the earlier of—

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

6 “(ii) the first day of the first plan
7 year of the multiemployer plan following
8 the plan year in which occurs the first
9 date, after the date of the plan’s entry into
10 critical status, as of which collective bar-
11 gaining agreements covering at least 75
12 percent of active participants in such mul-
13 tiemployer plan (determined as of such
14 date of entry) have expired.

15 “(C) REPORTING.—A summary of any re-
16 habilitation plan or modification thereto adopt-
17 ed during any plan year, together with annual
18 updates regarding the funding ratio of the plan,
19 shall be included in the annual report for such
20 plan year under section 104(a) of the Employee
21 Retirement Income Security Act of 1974 and in
22 the summary annual report described in section
23 104(b)(3) of such Act.

24 “(5) DEVELOPMENT OF REHABILITATION
25 PLAN.—

1 “(A) PROPOSALS BY PLAN SPONSOR.—

2 “(i) IN GENERAL.—Within 90 days
3 after the date of entry into critical status
4 (or the date as of which the requirements
5 of subsection (b)(1) are not met with re-
6 spect to the plan), the plan sponsor shall
7 propose to all bargaining parties a range of
8 alternative schedules of increases in con-
9 tributions and reductions in future benefit
10 accruals that would serve to carry out a re-
11 habilitation plan under this subsection.

12 “(ii) PROPOSAL ASSUMING NO CON-
13 TRIBUTION INCREASES.—Such proposals
14 shall include, as one of the proposed sched-
15 ules, a schedule of those reductions in fu-
16 ture benefit accruals that would be nec-
17 essary to cause the plan to cease to be in
18 critical status if there were no further in-
19 creases in rates of contribution to the plan.

20 “(iii) PROPOSAL WHERE CONTRIBU-
21 TIONS ARE NECESSARY.—If the plan spon-
22 sor determines that the plan will not cease
23 to be in critical status during the rehabili-
24 tation period unless the plan is amended to
25 provide for an increase in contributions,

1 the plan sponsor's proposals shall include a
2 schedule of those increases in contribution
3 rates that would be necessary to cause the
4 plan to cease to be in critical status if fu-
5 ture benefit accruals were reduced to the
6 maximum extent permitted by law.

7 “(B) REQUESTS FOR ADDITIONAL SCHED-
8 ULES.—Upon the request of any bargaining
9 party who—

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

12 “(ii) represents as an employee orga-
13 nization, for purposes of collective bar-
14 gaining, at least 5 percent of active partici-
15 pants,

16 the plan sponsor shall include among the pro-
17 posed schedules such schedules of increases in
18 contributions and reductions in future benefit
19 accruals as may be specified by the bargaining
20 parties.

21 “(C) SUBSEQUENT AMENDMENTS.—Upon
22 the adoption of a schedule of increases in con-
23 tributions or reductions in future benefit accru-
24 als as part of the rehabilitation plan, the plan
25 sponsor may amend the plan thereafter to up-

1 date the schedule to adjust for any experience
2 of the plan contrary to past actuarial assump-
3 tions, except that such an amendment may be
4 made not more than once in any 3-year period.

5 “(D) ALLOCATION OF REDUCTIONS IN FU-
6 TURE BENEFIT ACCRUALS.—Any schedule con-
7 taining reductions in future benefit accruals
8 forming a part of a rehabilitation plan shall be
9 applicable with respect to any group of active
10 participants who are employed by any bar-
11 gaining party (as an employer obligated to con-
12 tribute under the plan) in proportion to the ex-
13 tent to which increases in contributions under
14 such schedule apply to such bargaining party.

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

19 “(i) a monthly benefit equal to 1 per-
20 cent of the contributions required to be
21 made with respect to a participant or the
22 equivalent standard accrual rate for a par-
23 ticipant or group of participants under the
24 collective bargaining agreements in effect

1 as of the first day of the plan year in
2 which the plan enters critical status, or

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

5 The equivalent standard accrual rate shall be
6 determined by the trustees based on the stand-
7 ard or average contribution base units that they
8 determine to be representative for active partici-
9 pants and such other factors as they determine
10 to be relevant.

11 “(F) PROTECTION OF RESTORED RATES
12 OF ACCRUAL.—

13 “(i) IN GENERAL.—Any schedule pro-
14 posed under this paragraph shall not re-
15 duce the rate of future accruals below any
16 restored accrual rate.

17 “(ii) RESTORED ACCRUAL RATE.—For
18 purposes of clause (i), the term ‘restored
19 accrual rate’ means a rate of benefit accru-
20 als which was reduced and subsequently
21 restored before entry of the plan into crit-
22 ical status.

23 “(6) MAINTENANCE OF CONTRIBUTIONS AND
24 RESTRICTIONS ON BENEFITS PENDING ADOPTION OF
25 REHABILITATION PLAN.—The rules of paragraphs

1 (5) and (6) of subsection (b) shall apply for pur-
2 poses of this subsection by substituting the term ‘re-
3 habilitation plan’ for ‘funding improvement plan’.

4 “(7) SPECIAL RULES.—

5 “(A) AUTOMATIC EMPLOYER SUR-
6 CHARGE.—

7 “(i) 5 PERCENT AND 10 PERCENT
8 SURCHARGE.—For the first plan year in
9 which the plan is in critical status, each
10 employer otherwise obligated to make a
11 contribution for that plan year shall be ob-
12 ligated to pay to the plan a surcharge
13 equal to 5 percent of the contribution oth-
14 erwise required under the respective collec-
15 tive bargaining agreement (or other agree-
16 ment pursuant to which the employer con-
17 tributes). For each consecutive plan year
18 thereafter in which the plan is in critical
19 status, the surcharge shall be 10 percent of
20 the contribution otherwise required under
21 the respective collective bargaining agree-
22 ment (or other agreement pursuant to
23 which the employer contributes).

24 “(ii) ENFORCEMENT OF SUR-
25 CHARGE.—The surcharges under clause (i)

1 shall be due and payable on the same
2 schedule as the contributions on which
3 they are based. Any failure to make a sur-
4 charge payment shall be treated as a delin-
5 quent contribution under section 515 of
6 the Employee Retirement Income Security
7 Act of 1974 and shall be enforceable as
8 such.

9 “(iii) SURCHARGE TO TERMINATE
10 UPON CBA RENEGOTIATION.—The sur-
11 charge under this paragraph shall cease to
12 be effective with respect to employees cov-
13 ered by a collective bargaining agreement,
14 beginning on the date on which that agree-
15 ment is renegotiated to include—

16 “(I) a schedule of benefits and
17 contributions published by the trust-
18 ees pursuant to the plan’s rehabilita-
19 tion plan, or

20 “(II) otherwise collectively bar-
21 gained benefit changes.

22 “(iv) SURCHARGE NOT TO APPLY
23 UNTIL EMPLOYER RECEIVES 30-DAY NO-
24 TICE.—The surcharge under this subpara-
25 graph shall not apply to an employer until

1 30 days after the employer has been noti-
2 fied by the trustees that the plan is in crit-
3 ical status and that the surcharge is in ef-
4 fect.

5 “(v) SURCHARGE NOT TO GENERATE
6 INCREASED BENEFIT ACCRUALS.—Not-
7 withstanding any provision of a plan to the
8 contrary, the amount of any surcharge
9 shall not be the basis for any benefit ac-
10 cruals under the plan.

11 “(B) BENEFIT ADJUSTMENTS.—

12 “(i) IN GENERAL.—The trustees shall
13 make appropriate reductions, if any, to ad-
14 justable benefits based upon the outcome
15 of collective bargaining over the schedules
16 provided under paragraph (5).

17 “(ii) RETIREE PROTECTION.—Except
18 as provided in subparagraph (C), the trust-
19 ees of a plan in critical status may not re-
20 duce adjustable benefits of any participant
21 or beneficiary who was in pay status at
22 least one year before the first day of the
23 first plan year in which the plan enters
24 into critical status.

1 “(iii) TRUSTEE FLEXIBILITY.—The
2 trustees shall include in the schedules pro-
3 vided to the bargaining parties an allow-
4 ance for funding the benefits of partici-
5 pants with respect to whom contributions
6 are not currently required to be made, and
7 shall reduce their benefits to the extent
8 permitted under this title and considered
9 appropriate based on the plan’s then cur-
10 rent overall funding status and its future
11 prospects in light of the results of the par-
12 ties’ negotiations.

13 “(C) ADJUSTABLE BENEFIT DEFINED.—
14 For purposes of this paragraph, the term ‘ad-
15 justable benefit’ means—

16 “(i) benefits, rights, and features,
17 such as post-retirement death benefits, 60-
18 month guarantees, disability benefits not
19 yet in pay status, and similar benefits,

20 “(ii) retirement-type subsidies, early
21 retirement benefits, and benefit payment
22 options (other than the 50 percent quali-
23 fied joint-and-survivor benefit and single
24 life annuity), and

1 “(iii) benefit increases that would not
2 be eligible for a guarantee under section
3 4022A of the Employee Retirement Income
4 Security Act of 1974 on the first day of
5 the plan year in which the plan enters into
6 critical status because they were adopted,
7 or if later, took effect less than 60 months
8 before reorganization.

9 “(D) NORMAL RETIREMENT BENEFITS
10 PROTECTED.—Nothing in this paragraph shall
11 be construed to permit a plan to reduce the
12 level of a participant’s accrued benefit payable
13 at normal retirement age which is not an ad-
14 justable benefit.

15 “(E) ADJUSTMENTS DISREGARDED IN
16 WITHDRAWAL LIABILITY DETERMINATION.—

17 “(i) BENEFIT REDUCTIONS.—Any
18 benefit reductions under this paragraph
19 shall be disregarded in determining a
20 plan’s unfunded vested benefits for pur-
21 poses of determining an employer’s with-
22 drawal liability under section 4201 of the
23 Employee Retirement Income Security Act
24 of 1974.

1 “(ii) SURCHARGES.—Any surcharges
2 under this paragraph shall be disregarded
3 in determining an employer’s withdrawal
4 liability under section 4211 of the Em-
5 ployee Retirement Income Security Act of
6 1974, except for purposes of determining
7 the unfunded vested benefits attributable
8 to an employer or under a modified attrib-
9 utable method adopted with the approval
10 of the Pension Benefit Guaranty Corpora-
11 tion under subsection (c)(5) of that sec-
12 tion.

13 “(8) RESTRICTIONS UPON APPROVAL OF REHA-
14 BILITATION PLAN.—Upon adoption of a rehabilita-
15 tion plan with respect to a multiemployer plan, the
16 plan may not be amended—

17 “(A) so as to be inconsistent with the re-
18 habilitation plan, or

19 “(B) so as to increase future benefit accru-
20 als, unless the plan actuary certifies in advance
21 that, after taking into account the proposed in-
22 crease, the plan is reasonably expected to cease
23 to be in critical status.

24 “(9) IMPLEMENTATION OF DEFAULT SCHED-
25 ULE UPON FAILURE TO ADOPT REHABILITATION

1 PLAN.—If the plan is not amended by the end of the
2 240-day period after entry into critical status to in-
3 clude a rehabilitation plan, the plan sponsor shall
4 amend the plan to implement the schedule required
5 by paragraph (5)(A)(ii).

6 “(10) DEEMED WITHDRAWAL.—Upon the fail-
7 ure of any employer who has an obligation to con-
8 tribute under the plan to make contributions in com-
9 pliance with the schedule adopted under paragraph
10 (4) as part of the rehabilitation plan, the failure of
11 the employer may, at the discretion of the plan spon-
12 sor, be treated as a withdrawal by the employer from
13 the plan under section 4203 of the Employee Retire-
14 ment Income Security Act of 1974 or a partial with-
15 drawal by the employer under section 4205 of such
16 Act.

17 “(11) SPECIAL RULE FOR PLAN AMEND-
18 MENTS.—A multiemployer plan in critical status
19 shall not fail to meet the requirements of section
20 204(g) of the Employee Retirement Income Security
21 Act of 1974 or section 411(d)(6) solely by reason of
22 the adoption by the plan of an amendment necessary
23 to meet the requirements of this subsection.

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

1 “(1) BARGAINING PARTY.—The term ‘bar-
2 gaining party’ means, in connection with a multiem-
3 ployer plan—

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

6 “(B) an employee organization which, for
7 purposes of collective bargaining, represents
8 plan participants employed by such an em-
9 ployer.

10 “(2) FUNDED PERCENTAGE.—The term ‘fund-
11 ed percentage’ means the percentage expressed as a
12 ratio of which—

13 “(A) the numerator of which is the value
14 of the plan’s assets, as determined under sec-
15 tion 431(c)(2), and

16 “(B) the denominator of which is the ac-
17 crued liability of the plan.

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

21 “(4) ACTIVE PARTICIPANT.—The term ‘active
22 participant’ means, in connection with a multiem-
23 ployer plan, a participant who is in covered service
24 under the plan.

1 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
2 tive participant’ means, in connection with a multi-
3 employer plan, a participant who—

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

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

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

11 “(A) at any time during the current plan
12 year, such person is a participant or beneficiary
13 under the plan and is paid an early, late, nor-
14 mal, or disability retirement benefit under the
15 plan (or a death benefit under the plan related
16 to a retirement benefit), or

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

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

24 “(8) ENTRY INTO CRITICAL STATUS.—A plan
25 shall be treated as entering into critical status as of

1 the date that such plan is certified to be in critical
2 status under subsection (a)(1), is presumed to be in
3 critical status under subsection (a)(3), or enters into
4 critical status under subsection (b)(7).”.

5 (b) EXCISE TAX ON FAILURES TO ACT WITH RE-
6 SPECT TO MULTIEMPLOYER PLANS IN CRITICAL STA-
7 TUS.—Section 4971 of the Internal Revenue Code of 1986
8 is amended by redesignating subsection (g) as subsection
9 (h) and by inserting after subsection (f) the following:

10 “(g) MULTIEMPLOYER PLANS IN CRITICAL STA-
11 TUS.—

12 “(1) SUBSTITUTION OF EXCISE TAX FOR INI-
13 TIAL AND ADDITIONAL TAX.—In the case of a multi-
14 employer plan to which section 432(c) applies for a
15 period, subsections (a) and (b) shall not apply with
16 respect to such period.

17 “(2) FAILURE TO ADOPT REHABILITATION
18 PLAN.—

19 “(A) IN GENERAL.—In the case of a multi-
20 employer plan to which section 432(c) applies,
21 there is hereby imposed a tax on the failure of
22 such plan to adopt a rehabilitation plan.

23 “(B) AMOUNT OF TAX.—The amount of
24 the tax imposed under subparagraph (A) with

1 respect to any plan sponsor shall be the greater
2 of—

3 “(i) the amount of tax imposed under
4 subsection (a) (determined without regard
5 to this subsection), or

6 “(ii) the amount equal to \$1,100 mul-
7 tiplied by the number of days in the period
8 beginning on the first day of the 240-day
9 period described in section 432(c)(1) and
10 ending on the day on which the rehabilita-
11 tion plan is adopted.

12 “(C) LIABILITY FOR TAX.—

13 “(i) IN GENERAL.—The tax imposed
14 by subparagraph (A) shall be paid by each
15 plan sponsor.

16 “(ii) PLAN SPONSOR.—For purposes
17 of clause (i), the term ‘plan sponsor’ in the
18 case of a multiemployer plan means the as-
19 sociation, committee, joint board of trust-
20 ees, or other similar group of representa-
21 tives of the parties who establish or main-
22 tain the plan.

23 “(3) FAILURE TO COMPLY WITH REHABILITA-
24 TION PLAN.—

1 “(A) IN GENERAL.—In the case of a multi-
2 employer plan to which section 432(c) applies,
3 there is hereby imposed a tax on each failure to
4 make a required contribution under the reha-
5 bilitation plan within the time required under
6 such plan.

7 “(B) AMOUNT OF TAX.—The amount of
8 the tax imposed by subparagraph (A) shall be,
9 with respect to each required contribution
10 under the rehabilitation plan, the amount equal
11 to the excess of the amount of such required
12 contribution over the amount contributed.

13 “(C) LIABILITY FOR TAX.—The tax im-
14 posed by subparagraph (A) shall be paid by the
15 employer responsible for contributing to or
16 under the rehabilitation plan which fails to
17 make the contribution.

18 “(4) REHABILITATION PLAN.—For purposes of
19 this subsection, the term ‘rehabilitation plan’ means
20 the plan required to be adopted under section
21 432(c).”.

22 “(c) CLERICAL AMENDMENT.—The table of sections
23 for subpart A of part III of subchapter D of chapter 1
24 of such Code is amended by adding at the end the fol-
25 lowing new item:

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

1 (d) **EFFECTIVE DATE.**—The amendments made by
2 this section shall apply with respect to plan years begin-
3 ning after December 31, 2005.

4 (e) **SPECIAL RULE FOR 2006.**—In the case of any
5 plan year beginning in 2006, any reference in section 432
6 of the Internal Revenue Code of 1986 (as added by this
7 section) to section 431 of such Code (as added by this
8 Act) shall be treated as a reference to the corresponding
9 provision of such Code as in effect for plan years begin-
10 ning in such year.

11 **SEC. 213. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
12 **TIEMPLOYER PLANS.**

13 (a) **ADVANCE DETERMINATION OF IMPENDING IN-**
14 **SOLVENCY OVER 5 YEARS.**—Section 418E(d)(1) of the
15 Internal Revenue Code of 1986 is amended—

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

18 (2) by adding at the end the following new sen-
19 tence: “If the plan sponsor makes such a determina-
20 tion that the plan will be insolvent in any of the next
21 5 plan years, the plan sponsor shall make the com-
22 parison under this paragraph at least annually until
23 the plan sponsor makes a determination that the

1 plan will not be insolvent in any of the next 5 plan
2 years.”.

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

6 **TITLE III—OTHER PROVISIONS**

7 **SEC. 301. INTEREST RATE FOR 2006 FUNDING REQUIRE-** 8 **MENTS.**

9 (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
10 COME SECURITY ACT OF 1974.—

11 (1) IN GENERAL.—Subclause (II) of section
12 302(b)(5)(B)(ii) of the Employee Retirement Income
13 Security Act of 1974 (29 U.S.C. 1082(b)(5)(B)(ii))
14 is amended—

15 (A) by striking “January 1, 2006” and in-
16 serting “January 1, 2007”, and

17 (B) by striking “AND 2005” in the heading
18 and inserting “, 2005, AND 2006”.

19 (2) CURRENT LIABILITY.—Subclause (IV) of
20 section 302(d)(7)(C)(i) of such Act (29 U.S.C.
21 1082(d)(7)(C)(i)) is amended—

22 (A) by striking “or 2005” and inserting “,
23 2005, or 2006”, and

24 (B) by striking “AND 2005” in the heading
25 and inserting “, 2005, AND 2006”.

1 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
2 1986.—

3 (1) IN GENERAL.—Subclause (II) of section
4 412(b)(5)(B)(ii) of the Internal Revenue Code of
5 1986 is amended—

6 (A) by striking “January 1, 2006” and in-
7 serting “January 1, 2007”, and

8 (B) by striking “AND 2005” in the heading
9 and inserting “, 2005, AND 2006”.

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

12 (A) by striking “or 2005” and inserting “,
13 2005, or 2006”, and

14 (B) by striking “AND 2005” in the heading
15 and inserting “, 2005, AND 2006”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to plan years beginning after De-
18 cember 31, 2005.

19 **SEC. 302. INTEREST RATE ASSUMPTION FOR DETERMINA-**
20 **TION OF LUMP SUM DISTRIBUTIONS.**

21 (a) AMENDMENT TO EMPLOYEE RETIREMENT IN-
22 COME SECURITY ACT OF 1974.—Paragraph (3) of section
23 205(g) of the Employee Retirement Income Security Act
24 of 1974 (29 U.S.C. 1055(g)(3)) is amended to read as
25 follows:

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 section
10 303(h)(3).

11 “(ii) The term ‘applicable interest rate’ means
12 the adjusted first, second, and third segment rates
13 applied under rules similar to the rules of section
14 303(h)(2)(C) for the month before the date of the
15 distribution or such other time as the Secretary of
16 the Treasury may by regulations prescribe.

17 “(iii) For purposes of clause (ii), the adjusted
18 first, second, and third segment rates are the first,
19 second, and third segment rates which would be de-
20 termined under section 303(h)(2)(C) if—

21 “(I) section 303(h)(2)(D)(i) were applied
22 by substituting ‘the yields’ for ‘a 3-year weight-
23 ed average of yields’,

24 “(II) section 303(h)(2)(G)(i)(II) were ap-
25 plied by substituting ‘section

1 205(g)(3)(A)(ii)(II)’ for ‘section
2 302(b)(5)(B)(ii)(II)’, and
3 “(III) the applicable percentage under sec-
4 tion 303(h)(2)(G) were determined in accord-
5 ance with the following table:

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

6 (b) AMENDMENT TO INTERNAL REVENUE CODE OF
7 1986.—Paragraph (3) of section 417(e) of the Internal
8 Revenue Code of 1986 is amended to read as follows:

9 “(3) DETERMINATION OF PRESENT VALUE.—
10 “(A) IN GENERAL.—For purposes of para-
11 graphs (1) and (2), the present value shall not
12 be less than the present value calculated by
13 using the applicable mortality table and the ap-
14 plicable interest rate.
15 “(B) APPLICABLE MORTALITY TABLE.—
16 For purposes of subparagraph (A), the term
17 ‘applicable mortality table’ means a mortality
18 table, modified as appropriate by the Secretary,
19 based on the mortality table specified for the
20 plan year under section 430(h)(3).

1 “(C) APPLICABLE INTEREST RATE.—For
2 purposes of subparagraph (A), the term ‘appli-
3 cable interest rate’ means the adjusted first,
4 second, and third segment rates applied under
5 rules similar to the rules of section
6 430(h)(2)(C) for the month before the date of
7 the distribution or such other time as the Sec-
8 retary may by regulations prescribe.

9 “(D) APPLICABLE SEGMENT RATES.—For
10 purposes of subparagraph (C), the adjusted
11 first, second, and third segment rates are the
12 first, second, and third segment rates which
13 would be determined under section
14 430(h)(2)(C) if—

15 “(i) section 430(h)(2)(D)(i) were ap-
16 plied by substituting ‘the yields’ for ‘a 3-
17 year weighted average of yields’,

18 “(ii) section 430(h)(2)(G)(i)(II) were
19 applied by substituting ‘section
20 417(e)(3)(A)(ii)(II)’ for ‘section
21 412(b)(5)(B)(ii)(II)’, and

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

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

1 (c) **EFFECTIVE DATE.**—The amendments made by
2 this section shall apply with respect to plan years begin-
3 ning after December 31, 2006.

4 **SEC. 303. INTEREST RATE ASSUMPTION FOR APPLYING**
5 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**
6 **TRIBUTIONS.**

7 (a) **IN GENERAL.**—Clause (ii) of section
8 415(b)(2)(E) of the Internal Revenue Code of 1986 is
9 amended to read as follows:

10 “(ii) For purposes of adjusting any
11 benefit under subparagraph (B) for any
12 form of benefit subject to section
13 417(e)(3), the interest rate assumption
14 shall not be less than the greater of—

15 “(I) 5.5 percent,

16 “(II) the rate that provides a
17 benefit of not more than 105 percent
18 of the benefit that would be provided
19 if the applicable interest rate (as de-
20 fined in section 417(e)(3)) were the
21 interest rate assumption, or

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

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

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

7 (a) **AMENDMENT TO THE EMPLOYEE RETIREMENT**
8 **INCOME SECURITY ACT OF 1974.**—Subparagraph (A) of
9 section 3(2) of the Employee Retirement Income Security
10 Act of 1974 (29 U.S.C. 1002(2)) is amended by adding
11 at the end the following new sentence: “A distribution
12 from a plan, fund, or program shall not be treated as
13 made in a form other than retirement income or as a dis-
14 tribution prior to termination of covered employment sole-
15 ly because such distribution is made to an employee who
16 has attained age 62 and who is not separated from em-
17 ployment at the time of such distribution.”.

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

22 “(35) **DISTRIBUTIONS DURING WORKING RE-**
23 **TIREMENT.**—A trust forming part of a pension plan
24 shall not be treated as failing to constitute a quali-
25 fied trust under this section solely because a dis-

1 tribution is made from such trust to an employee
2 who has attained age 62 and who is not separated
3 from employment at the time of such distribution.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to distributions in plan years be-
6 ginning after December 31, 2005.

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

9 (a) DEFINITION OF AMOUNT INVOLVED.—Section
10 502(i) of the Employee Retirement Income Security Act
11 of 1974 (29 U.S.C. 1132(i)) is amended to read as follows:

12 “(i)(1) In the case of a transaction prohibited by sec-
13 tion 406 by a party in interest with respect to a plan to
14 which this part applies, the Secretary may assess a civil
15 penalty against such party in interest. Except as provided
16 in paragraph (2), the amount of such penalty may not ex-
17 ceed 5 percent of the amount involved in each such trans-
18 action for each year or part thereof during which the pro-
19 hibited transaction continues.

20 “(2) If the transaction is not corrected (in such man-
21 ner as the Secretary shall prescribe in regulations) within
22 90 days after notice from the Secretary (or such longer
23 period as the Secretary may permit), such penalty may
24 be in an amount not more than 100 percent of the amount
25 involved.

1 “(3) For purposes of paragraph (1)—

2 “(A) Except as provided in subparagraphs (C)
3 and (D), the term ‘amount involved’ means, with re-
4 spect to a prohibited transaction, the greater of—

5 “(i) the amount of money and the fair
6 market value of the other property given, or

7 “(ii) the amount of money and the fair
8 market value of the other property received.

9 “(B) For purposes of subparagraph (A), fair
10 market value shall be determined as of the date on
11 which the prohibited transaction occurs, except that
12 in the case described in paragraph (2) fair market
13 value shall be the highest fair market value during
14 the period between the date of the transaction and
15 the date of correction.

16 “(C) In the case of services described in sub-
17 section (b)(2) or (c)(2) of section 408, the term
18 ‘amount involved’ means only the amount of excess
19 compensation.

20 “(D) In the case of principal transactions pro-
21 hibited under section 406(a) involving securities or
22 commodities, the term ‘amount involved’ means only
23 the amount received by the disqualified person in ex-
24 cess of the amount such person would have received

1 in an arm's length transaction with an unrelated
2 party as of the same date.

3 “(E) For the purposes of this paragraph—

4 “(i) the term ‘security’ has the meaning
5 given such term by section 475(c)(2) of the In-
6 ternal Revenue Code of 1986 (without regard to
7 subparagraph (F)(iii) and the last sentence
8 thereof), and

9 “(ii) the term ‘commodity’ has the mean-
10 ing given such term by section 475(e)(2) of
11 such Code (without regard to subparagraph
12 (D)(iii) thereof).”.

13 (b) EXEMPTION FOR BLOCK TRADING.—

14 (1) AMENDMENTS TO EMPLOYEE RETIREMENT
15 INCOME SECURITY ACT OF 1974.—Section 408(b) of
16 such Act (29 U.S.C. 1108(b)), as amended by sec-
17 tion 601, is further amended by adding at the end
18 the following new paragraph:

19 “(15)(A) Any transaction involving the pur-
20 chase or sale of securities between a plan and a
21 party in interest (other than a fiduciary described in
22 section 3(21)(A)(ii)) with respect to a plan if—

23 “(i) the transaction involves a block trade,

24 “(ii) at the time of the transaction, the in-
25 terest of the plan (together with the interests of

1 any other plans maintained by the same plan
2 sponsor), does not exceed 10 percent of the ag-
3 gregate size of the block trade, and

4 “(iii) the terms of the transaction, includ-
5 ing the price, are at least as favorable to the
6 plan as an arm’s length transaction.

7 “(B) For purposes of this paragraph, the term
8 ‘block trade’ includes any trade which will be allo-
9 cated across two or more client accounts of a fidu-
10 ciary.”.

11 (2) AMENDMENTS TO INTERNAL REVENUE
12 CODE OF 1986.—

13 (A) IN GENERAL.—Subsection (d) of sec-
14 tion 4975 of the Internal Revenue Code of 1986
15 (relating to exemptions) is amended by striking
16 “or” at the end of paragraph (15), by striking
17 the period at the end of paragraph (16) and in-
18 serting “, or”, and by adding at the end the fol-
19 lowing new paragraph:

20 “(17) any transaction involving the purchase or
21 sale of securities between a plan and a party in in-
22 terest (other than a fiduciary described in subsection
23 (e)(3)(B)) with respect to a plan if—

24 “(A) the transaction involves a block trade,

1 “(B) at the time of the transaction, the in-
2 terest of the plan (together with the interests of
3 any other plans maintained by the same plan
4 sponsor), does not exceed 10 percent of the ag-
5 gregate size of the block trade, and

6 “(C) the terms of the transaction, includ-
7 ing the price, are at least as favorable to the
8 plan as an arm’s length transaction.

9 “(D) For purposes of this paragraph, the term
10 ‘block trade’ includes any trade which will be allo-
11 cated across two or more client accounts of a fidu-
12 ciary.”.

13 (B) SPECIAL RULE RELATING TO BLOCK
14 TRADE.—Subsection (f) of section 4975 of such
15 Code (relating to other definitions and special
16 rules) is amended by adding at the end the fol-
17 lowing new paragraph:

18 “(8) BLOCK TRADE.—For purposes of sub-
19 section (d)(17), the term ‘block trade’ includes any
20 trade which will be allocated across two or more cli-
21 ent accounts of a fiduciary.”.

22 (c) BONDING RELIEF.— Section 412(a) of such Act
23 (29 U.S.C. 1112(a)) is amended—

24 (1) by redesignating paragraph (2) as para-
25 graph (3);

1 (2) by striking “and” at the end of paragraph
2 (1); and

3 (3) by inserting after paragraph (1) the fol-
4 lowing new paragraph:

5 “(2) no bond shall be required of an entity
6 which is subject to regulation as a broker or a dealer
7 under section 15 of the Securities Exchange Act of
8 1934 (15 U.S.C. 78a et seq.) or an entity registered
9 under the Investment Advisers Act of 1940 (15
10 U.S.C. 80b-1 et seq.), including requirements im-
11 posed by a self-regulatory organization (within the
12 meaning of section 3(a)(26) of such Act (15 U.S.C.
13 78c(a)(26)), or any affiliate with respect to which
14 the broker or dealer agrees to be liable to the same
15 extent as if they held the assets directly.”.

16 (d) EXEMPTION FOR ELECTRONIC COMMUNICATION
17 NETWORK.—

18 (1) IN GENERAL.—Section 408(b) of such Act
19 (as amended by subsection (b)) is further amended
20 by adding at the end the following:

21 “(16) Any transaction involving the purchase or
22 sale of securities, or other property (as determined
23 in regulations of the Secretary) between a plan and
24 a fiduciary or a party in interest if—

1 “(A) the transaction is executed through
2 an exchange, electronic communication network,
3 alternative trading system, or similar execution
4 system or trading venue subject to regulation
5 and oversight by—

6 “(i) the applicable Federal regulating
7 entity, or

8 “(ii) such other applicable govern-
9 mental regulating agency as the Secretary
10 may determine appropriate in the case of
11 any fiduciary or party in interest or class
12 of fiduciaries or parties in interest or any
13 transaction or class of transactions,

14 “(B) neither the execution system nor the
15 parties to the transaction take into account the
16 identity of the parties in the execution of
17 trades,

18 “(C) the transaction is effected pursuant
19 to rules designed to match purchases and sales
20 at the best price available through the execution
21 system,

22 “(D) the price and compensation associ-
23 ated with the purchase and sale are not greater
24 than an arm’s length transaction with an unre-
25 lated party,

1 “(E) if the fiduciary or party in interest
2 has an ownership interest in the system or
3 venue described in subparagraph (A), the sys-
4 tem or venue has been authorized under the
5 plan for transactions described in this para-
6 graph, and

7 “(F) 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), the plan administrator is
11 provided written notice of the execution of such
12 transaction through such system or venue.”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by this subsection shall take effect 30 days after the
15 date of the enactment of this Act.

16 (e) CONFORMING ERISA’S PROHIBITED TRANS-
17 ACTION PROVISION TO FERSA.—Section 408(b) of such
18 Act (29 U.S.C. 1106), as amended by subsection (d), is
19 further amended by adding at the end the following new
20 paragraph:

21 “(17)(A) transactions described in subpara-
22 graphs (A), (B), and (D) of section 406(a)(1) be-
23 tween a plan and a party that is a party in interest
24 (under section 3(14)) solely by reason of providing
25 services, but only if in connection with such trans-

1 action the plan receives no less, nor pays no more,
2 than adequate consideration.

3 “(B) For purposes of this paragraph, the term
4 ‘adequate consideration’ means—

5 “(i) in the case of a security for which
6 there is a generally recognized market—

7 “(I) the price of the security pre-
8 vailing on a national securities exchange
9 which is registered under section 6 of the
10 Securities Exchange Act of 1934, taking
11 into account factors such as the size of the
12 transaction and marketability of the secu-
13 rity, or

14 “(II) if the security is not traded on
15 such a national securities exchange, a price
16 not less favorable to the plan than the of-
17 fering price for the security as established
18 by the current bid and asked prices quoted
19 by persons independent of the issuer and
20 of the party in interest, taking into ac-
21 count factors such as the size of the trans-
22 action and marketability of the security,
23 and

24 “(ii) in the case of an asset other than a
25 security for which there is a generally recog-

1 nized market, the fair market value of the asset
2 as determined in good faith by a fiduciary or fi-
3 duciaries in accordance with regulations pre-
4 scribed by the Secretary.”.

5 (f) RELIEF FOR FOREIGN EXCHANGE TRANS-
6 ACTIONS.— Section 408(b) of such Act (as amended by
7 the preceding provisions of this section) is further amend-
8 ed by adding at the end the following new paragraph:

9 “(18) Any foreign exchange transactions, be-
10 tween a bank or broker-dealer, or any affiliate of ei-
11 ther thereof, and a plan with respect to which the
12 bank or broker-dealer, or any affiliate, is a trustee,
13 custodian, fiduciary, or other party in interest, if—

14 “(A) the transaction is in connection with
15 the purchase or sale of securities,

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 the broker-dealer (or
23 any affiliate thereof) in comparable arm’s-
24 length foreign exchange transactions involving
25 unrelated parties, and

1 “(C) the exchange rate used by the bank
2 or broker-dealer for a particular foreign ex-
3 change transaction may not deviate by more
4 than 3 percent from the interbank bid and
5 asked rates at the time of the transaction as
6 displayed on an independent service that re-
7 ports rates of exchange in the foreign currency
8 market for such currency.”.

9 (g) DEFINITION OF PLAN ASSET VEHICLE.—Section
10 3 of such Act (29 U.S.C. 1002) is amended by adding
11 at the end the following new paragraph:

12 “(42) the term ‘plan assets’ means plan assets as de-
13 fined by such regulations as the Secretary may prescribe,
14 except that under such regulations the assets of any entity
15 shall not be treated as plan assets if, immediately after
16 the most recent acquisition of any equity interest in the
17 entity, less than 50 percent of the total value of each class
18 of equity interest in the entity is held by employee benefit
19 plan investors. For purposes of determinations pursuant
20 to this paragraph, the value of any equity interest owned
21 by a person (other than such an employee benefit plan)
22 who has discretionary authority or control with respect to
23 the assets of the entity or any person who provides invest-
24 ment advice for a fee (direct or indirect) with respect to
25 such assets, or any affiliate of such a person, shall be dis-

1 regarded for purposes of calculating the 50 percent
2 threshold. An entity shall be considered to hold plan assets
3 only to the extent of the percentage of the equity interest
4 owned by benefit plan investors. For purposes of this para-
5 graph, the term ‘benefit plan investor’ means an employee
6 benefit plan subject to this part and any plan to which
7 section 4975 of the Internal Revenue Code of 1986 ap-
8 plies.”.

9 **SEC. 306. CORRECTION PERIOD FOR CERTAIN TRANS-**
10 **ACTIONS INVOLVING SECURITIES AND COM-**
11 **MODITIES.**

12 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-
13 COME SECURITY ACT OF 1974.—Section 408(b) of the
14 Employee Retirement Income Security Act of 1974 (29
15 U.S.C. 1108(b)), as amended by sections 304 and 601,
16 is further amended by adding at the end the following new
17 paragraph:

18 “(19)(A) Except as provided in subparagraphs
19 (B) and (C), a transaction described in section
20 406(a) in connection with the acquisition, holding,
21 or disposition of any security or commodity, if the
22 transaction is corrected before the end of the correc-
23 tion period.

24 “(B) Subparagraph (A) does not apply to any
25 transaction between a plan and a plan sponsor or its

1 affiliates that involves the acquisition or sale of an
2 employer security (as defined in section 407(d)(1))
3 or the acquisition, sale, or lease of employer real
4 property (as defined in section 407(d)(2)).

5 “(C) In the case of any fiduciary or other party
6 in interest (or any other person knowingly partici-
7 pating in such transaction), subparagraph (A) does
8 not apply to any transaction if, at the time the
9 transaction occurs, such fiduciary or party in inter-
10 est (or other person) knew (or reasonably should
11 have known) that the transaction would (without re-
12 gard to this paragraph) constitute a violation of sec-
13 tion 406(a).

14 “(D) For purposes of this paragraph, the term
15 ‘correction period’ means, in connection with a fidu-
16 ciary or party in interest (or other person knowingly
17 participating in the transaction), the 14-day period
18 beginning on the date on which such fiduciary or
19 party in interest (or other person) discovers, or rea-
20 sonably should have discovered, that the transaction
21 would (without regard to this paragraph) constitute
22 a violation of section 406(a).

23 “(E) For purposes of this paragraph—

24 “(i) The term ‘security’ has the meaning
25 given such term by section 475(c)(2) of the In-

1 ternal Revenue Code of 1986 (without regard to
2 subparagraph (F)(iii) and the last sentence
3 thereof).

4 “(ii) The term ‘commodity’ has the mean-
5 ing given such term by section 475(e)(2) of
6 such Code (without regard to subparagraph
7 (D)(iii) thereof).

8 “(iii) The term ‘correct’ means, with re-
9 spect to a transaction—

10 “(I) to undo the transaction to the ex-
11 tent possible and in any case to make good
12 to the plan or affected account any losses
13 resulting from the transaction, and

14 “(II) to restore to the plan or affected
15 account any profits made through the use
16 of assets of the plan.”.

17 (b) AMENDMENT OF INTERNAL REVENUE CODE OF
18 1986.—

19 (1) IN GENERAL.—Subsection (d) of section
20 4975 of the Internal Revenue Code of 1986 (relating
21 to exemptions), as amended by this Act, is amended
22 by striking “or” at the end of paragraph (16), by
23 striking the period at the end of paragraph (17) and
24 inserting “, or”, and by adding at the end the fol-
25 lowing new paragraph:

1 “(18) except as provided in subsection (f)(9), a
2 transaction described in subparagraph (A), (B), (C),
3 or (D) of subsection (c)(1) in connection with the
4 acquisition, holding, or disposition of any security or
5 commodity, if the transaction is corrected before the
6 end of the correction period.”.

7 (2) SPECIAL RULES RELATING TO CORRECTION
8 PERIOD.—Subsection (f) of section 4975 of such
9 Code (relating to other definitions and special rules),
10 as amended by this Act, is amended by adding at
11 the end the following new paragraph:

12 “(9) CORRECTION PERIOD.—

13 “(A) IN GENERAL.—For purposes of sub-
14 section (d)(18), the term ‘correction period’
15 means the 14-day period beginning on the date
16 on which the disqualified person discovers, or
17 reasonably should have discovered, that the
18 transaction would (without regard to this para-
19 graph and subsection (d)(18)) constitute a pro-
20 hibited transaction.

21 “(B) EXCEPTIONS.—

22 “(i) EMPLOYER SECURITIES.—Sub-
23 section (d)(18) does not apply to any
24 transaction between a plan and a plan
25 sponsor or its affiliates that involves the

1 acquisition or sale of an employer security
2 (as defined in section 407(d)(1)) or the ac-
3 quisition, sale, or lease of employer real
4 property (as defined in section 407(d)(2)).

5 “(ii) KNOWING PROHIBITED TRANS-
6 ACTION.—In the case of any disqualified
7 person, subsection (d)(18) does not apply
8 to a transaction if, at the time the trans-
9 action is entered into, the disqualified per-
10 son knew (or reasonably should have
11 known) that the transaction would (with-
12 out regard to this paragraph) constitute a
13 prohibited transaction.

14 “(C) ABATEMENT OF TAX WHERE THERE
15 IS A CORRECTION.—If a transaction is not
16 treated as a prohibited transaction by reason of
17 subsection (d)(18), then no tax under sub-
18 section (a) and (b) shall be assessed with re-
19 spect to such transaction, and if assessed the
20 assessment shall be abated, and if collected
21 shall be credited or refunded as an overpay-
22 ment.

23 “(D) DEFINITIONS.—For purposes of this
24 paragraph and subsection (d)(18)—

1 “(i) SECURITY.—The term ‘security’
2 has the meaning given such term by sec-
3 tion 475(c)(2) (without regard to subpara-
4 graph (F)(iii) and the last sentence there-
5 of).

6 “(ii) COMMODITY.—The term ‘com-
7 modity’ has the meaning given such term
8 by section 475(e)(2) (without regard to
9 subparagraph (D)(iii) thereof).

10 “(iii) CORRECT.—The term ‘correct’
11 means, with respect to a transaction—

12 “(I) to undo the transaction to
13 the extent possible and in any case to
14 make good to the plan or affected ac-
15 count any losses resulting from the
16 transaction, and

17 “(II) to restore to the plan or af-
18 fected account any profits made
19 through the use of assets of the
20 plan.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to any transaction which the fidu-
23 ciary or disqualified person discovers, or reasonably should
24 have discovered, after the date of the enactment of this
25 Act constitutes a prohibited transaction.

1 **SEC. 307. RECOVERY BY REIMBURSEMENT OR SUBROGA-**
2 **TION WITH RESPECT TO PROVIDED BENE-**
3 **FITS.**

4 (a) IN GENERAL.—Section 502(a) of the Employee
5 Retirement Income Security Act of 1974 (29 U.S.C.
6 1132(a)) is amended by adding, after and below para-
7 graph (9), the following new sentence:

8 “Actions described under paragraph (3) include an action
9 by a fiduciary for recovery of amounts on behalf of the
10 plan enforcing terms of the plan that provide a right of
11 recovery by reimbursement or subrogation with respect to
12 benefits provided to or for a participant or beneficiary.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on January 1, 2006.

15 **SEC. 308. EXERCISE OF CONTROL OVER PLAN ASSETS IN**
16 **CONNECTION WITH QUALIFIED CHANGES IN**
17 **INVESTMENT OPTIONS.**

18 (a) IN GENERAL.—Section 404(c) of the Employee
19 Retirement Income Security Act of 1974 (29 U.S.C.
20 1104(c)) is amended by adding at the end the following
21 new paragraph:

22 “(4)(A) In any case in which a qualified change in
23 investment options occurs in connection with an individual
24 account plan, a participant or beneficiary shall not be
25 treated for purposes of paragraph (1) as not exercising
26 control over the assets in his account in connection with

1 such change if the requirements of subparagraph (C) are
2 met in connection with such change.

3 “(B) For purposes of subparagraph (A), the term
4 ‘qualified change in investment options’ means, in connec-
5 tion with an individual account plan, a change in the in-
6 vestment options offered to the participant or beneficiary
7 under the terms of the plan, under which—

8 “(i) the participant’s account is reallocated
9 among one or more new investment options which
10 are offered in lieu of one or more investment options
11 offered immediately prior to the effective date of the
12 change, and

13 “(ii) the characteristics of the new investment
14 options, including characteristics relating to risk and
15 rate of return, are, as of immediately after the
16 change, reasonably similar to those of the existing
17 investment options as of immediately before the
18 change.

19 “(C) The requirements of this subparagraph are met
20 in connection with a qualified change in investment op-
21 tions if—

22 “(i) at least 60 days prior to the effective date
23 of the change, the plan administrator furnishes writ-
24 ten notice of the change to the participants and
25 beneficiaries, including information comparing the

1 existing and new investment options and an expla-
2 nation that, in the absence of affirmative investment
3 instructions from the participant or beneficiary to
4 the contrary, the account of the participant or bene-
5 ficiary will be invested in the manner described in
6 subparagraph (B),

7 “(ii) the participant has not provided to the
8 plan administrator, in advance of the effective date
9 of the change, affirmative investment instructions
10 contrary to the change, and

11 “(iii) the investments under the plan of the par-
12 ticipant or beneficiary as in effect immediately prior
13 to the effective date of the change was the product
14 of the exercise by such participant or beneficiary of
15 control over the assets of the account within the
16 meaning of paragraph (1).”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall apply with respect to changes in in-
19 vestment options taking effect on or after January 1,
20 2006.

21 **SEC. 309. CLARIFICATION OF FIDUCIARY RULES.**

22 Not later than 1 year after the date of the enactment
23 of this Act, the Secretary of Labor shall issue final regula-
24 tions clarifying that the selection of an annuity contract

1 as an optional form of distribution from an individual ac-
2 count plan to a participant or beneficiary—

3 (1) is not subject to the safest available annuity
4 standard under Interpretive Bulletin 95-1 (29
5 C.F.R. 2509.95-1), and

6 (2) is subject to all otherwise applicable fidu-
7 ciary standards.

8 **SEC. 310. GOVERNMENT ACCOUNTABILITY OFFICE PEN-**
9 **SION FUNDING REPORT.**

10 (a) **IN GENERAL.**—The Comptroller General of the
11 Government Accountability Office shall transmit to the
12 Congress a pension funding report not later than one year
13 after the date of the enactment of this Act.

14 (b) **REPORT CONTENT.**—The pension funding report
15 required under subsection (a) shall include an analysis of
16 the feasibility, advantages, and disadvantages of—

17 (1) requiring an employee pension benefit plan
18 to insure a portion of such plan's total investments;

19 (2) requiring an employee pension benefit plan
20 to adhere to uniform solvency standards set by the
21 Pension Benefit Guaranty Corporation, which are
22 similar to those applied on a State level in the insur-
23 ance industry; and

24 (3) amortizing a single-employer defined benefit
25 pension plan's shortfall amortization base (referred

1 to in section 303(c)(3) of the Employee Retirement
2 Income Security Act of 1974 (as amended by this
3 Act)) over various periods of not more than 7 years.

4 **TITLE IV—IMPROVEMENTS IN**
5 **PBGC GUARANTEE PROVISIONS**

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

7 (a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of
8 the Employee Retirement Income Security Act of 1974
9 (29 U.S.C. 1306(a)(3)) is amended—

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

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

14 “(I) for plan years beginning after Decem-
15 ber 31, 1990, and before January 1, 2006, \$19,
16 or

17 “(II) for plan years beginning after De-
18 cember 31, 2005, the amount determined under
19 subparagraph (F),

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

24 (2) by adding at the end the following new sub-
25 paragraph:

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

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

10 “(I) the national average wage index (as de-
11 fined in section 209(k)(1) of the Social Security Act)
12 for the first of the 2 calendar years preceding the
13 calendar year in which the plan year begins, to

14 “(II) the national average wage index (as so de-
15 fined) for 2004,

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

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

24 “(I) except as provided in subclause (II), the
25 premium amount referred to in subparagraph

1 (A)(i)(II) for any such plan year is the amount set
 2 forth in connection with such plan year in the fol-
 3 lowing table:

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

4 “(II) if the plan’s funding target attainment
 5 percentage for the plan year preceding the current
 6 plan year was less than 80 percent, the premium
 7 amount referred to in subparagraph (A)(i)(II) for
 8 such current plan year is the amount set forth in
 9 connection with such current plan year in the fol-
 10 lowing table:

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

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

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

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

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

12 “(B) SPECIAL RULE FOR PLANS TERMINATED
13 IN BANKRUPTCY REORGANIZATION.—If the plan is
14 terminated under 4041(c)(2)(B)(ii) or under section
15 4042 and, as of the termination date, a person who
16 is (as of such date) a contributing sponsor of the
17 plan or a member of such sponsor’s controlled group
18 has filed or has had filed against such person a peti-
19 tion seeking reorganization in a case under title 11
20 of the United States Code, or under any similar law
21 of a State or a political subdivision of a State (or
22 a case described in section 4041(c)(2)(B)(i) filed by
23 or against such person has been converted, as of
24 such date, to such a case in which reorganization is
25 sought), subparagraph (A) shall not apply to such

1 plan until the date of the discharge of such person
2 in such case.

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

5 “(i) IN GENERAL.—The term ‘applicable
6 12-month period’ means—

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

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

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

25 “(D) COORDINATION WITH SECTION 4007.—

1 “(i) Notwithstanding section 4007—

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

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

9 “(ii) The fifth sentence of section 4007(a)
10 shall not apply in connection with premiums de-
11 termined under this paragraph.”.

12 (c) RISK-BASED PREMIUMS.—

13 (1) EXTENSION THROUGH 2006.—Section
14 4006(a)(3)(E)(iii)(V) of such Act is amended by
15 striking “January 1, 2006” and inserting “January
16 1, 2007”.

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

22 “(iii)(I) For purposes of clause (ii), except as pro-
23 vided in subclause (II), the term ‘unfunded vested bene-
24 fits’ means, for a plan year, the amount which would be
25 the plan’s funding shortfall (as defined in section

1 303(c)(4)), if the value of plan assets of the plan were
2 equal to the fair market value of such assets and only vest-
3 ed benefits were taken into account.

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

11 (d) EFFECTIVE DATES.—

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

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

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

1 **TITLE V—DISCLOSURE**

2 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.**

3 (a) APPLICATION OF PLAN FUNDING NOTICE RE-
4 QUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Sec-
5 tion 101(f) of the Employee Retirement Income Security
6 Act of 1974 (29 U.S.C. 1021(f)) is amended—

7 (1) in the heading, by striking “MULTIEM-
8 PLOYER”;

9 (2) in paragraph (1), by striking “which is a
10 multiemployer plan”; and

11 (3) by striking paragraph (2)(B)(iii) and insert-
12 ing the following:

13 “(iii)(I) in the case of a single-em-
14 ployer plan, a summary of the rules gov-
15 erning termination of single-employer plans
16 under subtitle C of title IV, or

17 “(II) in the case of a multiemployer
18 plan, a summary of the rules governing in-
19 solvent multiemployer plans, including the
20 limitations on benefit payments and any
21 potential benefit reductions and suspen-
22 sions (and the potential effects of such lim-
23 itations, reductions, and suspensions on
24 the plan); and”.

1 (b) INCLUSION OF STATEMENT OF THE RATIO OF IN-
2 ACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Sec-
3 tion 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B))
4 is amended—

5 (1) in clause (iii)(II) (added by subsection
6 (a)(3) of this section), by striking “and” at the end;

7 (2) in clause (iv), by striking “apply.” and in-
8 serting “apply; and”; and

9 (3) by adding at the end the following new
10 clause:

11 “(v) a statement of the ratio, as of
12 the end of the plan year to which the no-
13 tice relates, of—

14 “(I) the number of participants
15 who are not in covered service under
16 the plan and are in pay status under
17 the plan or have a nonforfeitable right
18 to benefits under the plan, to

19 “(II) the number of participants
20 who are in covered service under the
21 plan.”.

22 (c) COMPARISON OF MONTHLY AVERAGE OF VALUE
23 OF PLAN ASSETS TO PROJECTED CURRENT LIABIL-
24 ITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C.

1 1021(f)(2)(B)) (as amended by the preceding provisions
2 of this section) is amended further—

3 (1) by striking clause (ii) and inserting the fol-
4 lowing:

5 “(ii) a statement of a reasonable esti-
6 mate of—

7 “(I) the value of the plan’s assets
8 for the plan year to which the notice
9 relates,

10 “(II) projected liabilities of the
11 plan for the plan year to which the
12 notice relates, and

13 “(III) the ratio of the estimated
14 amount determined under subclause
15 (I) to the estimated amount deter-
16 mined under subclause (II);” and

17 (2) by adding at the end (after and below
18 clause (v)) the following:

19 “For purposes of determining a plan’s projected
20 liabilities for a plan year under clause (ii)(II),
21 such projected liabilities shall be determined by
22 projecting forward in a reasonable manner to
23 the end of the plan year the liabilities of the
24 plan to participants and beneficiaries as of the
25 first day of the plan year, taking into account

1 any significant events that occur during the
2 plan year and that have a material effect on
3 such liabilities, including any plan amendments
4 in effect for the plan year.”.

5 (d) STATEMENT OF PLAN’S FUNDING POLICY AND
6 METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B)
7 of such Act (as amended by the preceding provisions of
8 this section) is amended further—

9 (1) in clause (iv), by striking “and” at the end;

10 (2) in clause (v), by striking the period and in-
11 serting “; and”; and

12 (3) by inserting after clause (v) the following
13 new clause:

14 “(vi) a statement setting forth the
15 funding policy of the plan and the asset al-
16 location of investments under the plan (ex-
17 pressed as percentages of total assets) as
18 of the end of the plan year to which the
19 notice relates.”.

20 (e) NOTICE OF FUNDING IMPROVEMENT PLAN OR
21 REHABILITATION PLAN ADOPTED BY MULTIEmployer
22 PLAN.—Section 101(f)(2)(B) of such Act (as amended by
23 the preceding provisions of this section) is amended
24 further—

25 (1) in clause (v), by striking “and” at the end;

1 (2) in clause (vi), by striking the period and in-
2 serting “; and”; and

3 (3) by inserting after clause (vi) the following
4 new clause:

5 “(vii) a summary of any funding im-
6 provement plan, rehabilitation plan, or
7 modification thereof adopted under section
8 305 during the plan year to which the no-
9 tice relates.”.

10 (f) NOTICE DUE 90 DAYS AFTER PLAN’S VALU-
11 ATION DATE.—

12 (1) IN GENERAL.—Section 101(f)(3) of such
13 Act (29 U.S.C. 1021(f)(3)) is amended by striking
14 “two months after the deadline (including exten-
15 sions) for filing the annual report for the plan year”
16 and inserting “90 days after the end of the plan
17 year”.

18 (2) MODEL NOTICE.—Not later than 180 days
19 after the date of the enactment of this Act, the Sec-
20 retary of Labor shall publish a model version of the
21 notice required by section 101(f) of the Employee
22 Retirement Income Security Act of 1974.

23 (g) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to plan years beginning after De-
25 cember 31, 2005.

1 **SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.**

2 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-
3 MENTS.—Section 103 of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1023) is amended—

5 (1) in subsection (a)(1)(B), by striking “sub-
6 sections (d) and (e)” and inserting “subsections (d),
7 (e), and (f)”; and

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

10 “(f)(1) With respect to any defined benefit plan, an
11 annual report under this section for a plan year shall in-
12 clude the following:

13 “(A) The ratio, as of the end of such plan year,
14 of—

15 “(i) the number of participants who, as of
16 the end of such plan year, are not in covered
17 service under the plan and are in pay status
18 under the plan or have a nonforfeitable right to
19 benefits under the plan, to

20 “(ii) the number of participants who are in
21 covered service under the plan as of the end of
22 such plan year.

23 “(B) In any case in which any liabilities to par-
24 ticipants or their beneficiaries under such plan as of
25 the end of such plan year consist (in whole or in
26 part) of liabilities to such participants and bene-

1 ficiaries borne by 2 or more pension plans as of im-
2 mediately before such plan year, the funded ratio of
3 each of such 2 or more pension plans as of imme-
4 diately before such plan year and the funded ratio
5 of the plan with respect to which the annual report
6 is filed as of the end of such plan year.

7 “(C) For purposes of this paragraph, the term
8 ‘funded ratio’ means, in connection with a plan, the
9 percentage which—

10 “(i) the value of the plan’s assets is of

11 “(ii) the liabilities to participants and
12 beneficiaries under the plan.

13 “(2) With respect to any defined benefit plan which
14 is a multiemployer plan, an annual report under this sec-
15 tion for a plan year shall include the following:

16 “(A) The number of employers obligated to con-
17 tribute to the plan as of the end of such plan year.

18 “(B) The number of participants under the
19 plan on whose behalf no employer contributions have
20 been made to the plan for such plan year. For pur-
21 poses of this subparagraph, the term ‘employer con-
22 tribution’ means, in connection with a participant, a
23 contribution made by an employer as an employer of
24 such participant.”.

1 (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-
2 ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-
3 JECTIONS.—Section 103(d) of such Act (29 U.S.C.
4 1023(d)) is amended—

5 (1) by redesignating paragraphs (12) and (13)
6 as paragraphs (13) and (14), respectively; and

7 (2) by inserting after paragraph (11) the fol-
8 lowing new paragraph:

9 “(12) A statement explaining the actuarial as-
10 sumptions and methods used in projecting future re-
11 tirements and forms of benefit distributions under
12 the plan.”.

13 (c) FILING AFTER 285 DAYS AFTER PLAN YEAR
14 ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of
15 such Act (29 U.S.C. 1024(a)(1)) is amended by inserting
16 after the first sentence the following new sentence: “In
17 the case of a pension plan, the Secretary may extend the
18 deadline for filing the annual report for any plan year past
19 285 days after the close of the plan year only on a case
20 by case basis and only in cases of hardship, in accordance
21 with regulations which shall be prescribed by the Sec-
22 retary.”.

23 (d) INTERNET DISPLAY OF INFORMATION.—Section
24 104(b) of such Act (29 U.S.C. 1024(b)) is amended by
25 adding at the end the following:

1 “(5) Identification and basic plan information and ac-
2 tuarial information included in the annual report for any
3 plan year shall be filed with the Secretary in an electronic
4 format which accommodates display on the Internet, in ac-
5 cordance with regulations which shall be prescribed by the
6 Secretary. The Secretary shall provide for display of such
7 information included in the annual report, within 90 days
8 after the date of the filing of the annual report, on a
9 website maintained by the Secretary on the Internet and
10 other appropriate media. Such information shall also be
11 displayed on any website maintained by the plan sponsor
12 (or by the plan administrator on behalf of the plan spon-
13 sor) on the Internet, in accordance with regulations which
14 shall be prescribed by the Secretary.”.

15 (e) SUMMARY ANNUAL REPORT FILED WITHIN 15
16 DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-
17 PORT.—Section 104(b)(3) of such Act (29 U.S.C.
18 1024(b)(3)) is amended—

19 (1) by striking “Within 210 days after the close
20 of the fiscal year of the plan,” and inserting “Within
21 15 business days after the due date under subsection
22 (a)(1) for the filing of the annual report for the fis-
23 cal year of the plan,”; and

24 (2) by striking “the latest” and inserting
25 “such”.

1 (f) DISCLOSURE OF PLAN ASSETS AND LIABILITIES
2 IN SUMMARY ANNUAL REPORT.—

3 (1) IN GENERAL.—Section 104(b)(3) of such
4 Act (as amended by subsection (a)) is amended
5 further—

6 (A) by inserting “(A)” after “(3)”; and

7 (B) by adding at the end the following:

8 “(B) The material provided pursuant to subpara-
9 graph (A) to summarize the latest annual report shall be
10 written in a manner calculated to be understood by the
11 average plan participant and shall set forth the total as-
12 sets and liabilities of the plan for the plan year for which
13 the latest annual report was filed and for each of the 2
14 preceding plan years, as reported in the annual report for
15 each such plan year under this section.”.

16 (g) INFORMATION MADE AVAILABLE TO PARTICI-
17 PANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT
18 TO MULTIEMPLOYER PLANS.—

19 (1) IN GENERAL.—Section 101 of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C.
21 1021) (as amended by section 103(b)(2)(A)) is fur-
22 ther amended—

23 (A) by redesignating subsection (k) as sub-
24 section (l); and

1 (B) by inserting after subsection (j) the
2 following new subsection:

3 “(k) **MULTIEMPLOYER PLAN INFORMATION MADE**
4 **AVAILABLE ON REQUEST.**—

5 “(1) **IN GENERAL.**—Each administrator of a
6 multiemployer plan shall furnish to any plan partici-
7 pant or beneficiary or any employer having an obli-
8 gation to contribute to the plan, who so requests in
9 writing—

10 “(A) a copy of any actuarial report re-
11 ceived by the plan for any plan year which has
12 been in receipt by the plan for at least 30 days,
13 and

14 “(B) a copy of any financial report pre-
15 pared for the plan by any plan investment man-
16 ager or advisor or other person who is a plan
17 fiduciary which has been in receipt by the plan
18 for at least 30 days.

19 “(2) **COMPLIANCE.**—Information required to be
20 provided under paragraph (1) —

21 “(A) shall be provided to the requesting
22 participant, beneficiary, or employer within 30
23 days after the request in a form and manner
24 prescribed in regulations of the Secretary, and

1 “(B) may be provided in written, elec-
2 tronic, or other appropriate form to the extent
3 such form is reasonably accessible to persons to
4 whom the information is required to be pro-
5 vided.

6 “(3) LIMITATIONS.—In no case shall a partici-
7 pant, beneficiary, or employer be entitled under this
8 subsection to receive more than one copy of any re-
9 port described in paragraph (1) during any one 12-
10 month period. The administrator may make a rea-
11 sonable charge to cover copying, mailing, and other
12 costs of furnishing copies of information pursuant to
13 paragraph (1). The Secretary may by regulations
14 prescribe the maximum amount which will constitute
15 a reasonable charge under the preceding sentence.”.

16 (2) ENFORCEMENT.—Section 502(c)(4) of such
17 Act (29 U.S.C. 1132(c)(4)) (as amended by section
18 103(b)(2)(B)) is further amended by striking “sec-
19 tions 101(j) and 302(b)(7)(F)(iv)” and inserting
20 “sections 101(j), 101(k), and 302(b)(7)(F)(iv)”.

21 (3) REGULATIONS.—The Secretary shall pre-
22 scribe regulations under section 101(k)(2) of the
23 Employee Retirement Income Security Act of 1974
24 (added by paragraph (1) of this subsection) not later

1 than 90 days after the date of the enactment of this
2 Act.

3 (h) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY
4 TO MULTIEMPLOYER PLANS.—

5 (1) IN GENERAL.—Section 101 of such Act (as
6 amended by subsection (g) of this section) is further
7 amended—

8 (A) by redesignating subsection (l) as sub-
9 section (m); and

10 (B) by inserting after subsection (k) the
11 following new subsection:

12 “(l) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-
13 ITY.—

14 “(1) IN GENERAL.—The plan sponsor or ad-
15 ministrator of a multiemployer plan shall furnish to
16 any employer who has an obligation to contribute
17 under the plan and who so requests in writing notice
18 of—

19 “(A) the amount which would be the
20 amount of such employer’s withdrawal liability
21 under part 1 of subtitle E of title IV if such
22 employer withdrew on the last day of the plan
23 year preceding the date of the request, and

24 “(B) the average increase, per participant
25 under the plan, in accrued liabilities under the

1 plan as of the end of such plan year to partici-
2 pants under such plan on whose behalf no em-
3 ployer contributions are payable (or their bene-
4 ficiaries), which would be attributable to such a
5 withdrawal by such employer.

6 For purposes of subparagraph (B), the term ‘em-
7 ployer contribution’ means, in connection with a par-
8 ticipant, a contribution made by an employer as an
9 employer of such participant.

10 “(2) COMPLIANCE.—Any notice required to be
11 provided under paragraph (1)—

12 “(A) shall be provided to the requesting
13 employer within 180 days after the request in
14 a form and manner prescribed in regulations of
15 the Secretary, and

16 “(B) may be provided in written, elec-
17 tronic, or other appropriate form to the extent
18 such form is reasonably accessible to employers
19 to whom the information is required to be pro-
20 vided.

21 “(3) LIMITATIONS.—In no case shall an em-
22 ployer be entitled under this subsection to receive
23 more than one notice described in paragraph (1)
24 during any one 12-month period. The person re-
25 quired to provide such notice may make a reasonable

1 charge to cover copying, mailing, and other costs of
2 furnishing such notice pursuant to paragraph (1).
3 The Secretary may by regulations prescribe the max-
4 imum amount which will constitute a reasonable
5 charge under the preceding sentence.”.

6 (2) ENFORCEMENT.—Section 502(c)(4) of such
7 Act (29 U.S.C. 1132(c)(4)) (as amended by para-
8 graph (1)) is further amended by striking “sections
9 101(j), 101(k), and 302(b)(7)(F)(iv)” and inserting
10 “sections 101(j), 101(k), 101(l), and
11 302(b)(7)(F)(iv)”.

12 (i) MODEL FORM.—Not later than 180 days after the
13 date of the enactment of this Act, the Secretary of Labor
14 shall publish a model form for providing the statements,
15 schedules, and other material required to be provided
16 under section 104(b)(3) of the Employee Retirement In-
17 come Security Act of 1974, as amended by this section.

18 (j) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to plan years beginning after De-
20 cember 31, 2005.

21 **SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.**

22 (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED
23 TO PROVIDE INFORMATION TO PBGC.—Section 4010(b)
24 of the Employee Retirement Income Security Act of 1974
25 (29 U.S.C. 1310(b)) is amended by striking paragraph

1 (1), by redesignating paragraphs (2) and (3) as para-
2 graphs (3) and (4), respectively, and by inserting before
3 paragraph (3) (as so redesignated) the following new para-
4 graphs:

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

8 “(2)(A) the aggregate funding target attain-
9 ment percentage of the plan (as defined in sub-
10 section (d)(2)) is less than 75 percent, and

11 “(B) the plan sponsor is in an industry with re-
12 spect to which the corporation determines that there
13 is substantial unemployment or underemployment
14 and the sales and profits are depressed or declin-
15 ing;”.

16 (b) NOTICE TO PARTICIPANTS AND BENE-
17 FICIARIES.—Section 4010 of the Employee Retirement In-
18 come Security Act of 1974 (29 U.S.C. 1310) is amended
19 by adding at the end the following new subsection:

20 “(d) NOTICE TO PARTICIPANTS AND BENE-
21 FICIARIES.—

22 “(1) IN GENERAL.—Not later than 90 days
23 after the submission by any person to the corpora-
24 tion of information or documentary material with re-
25 spect to any plan pursuant to subsection (a), such

1 person shall provide notice of such submission to
2 each participant and beneficiary under the plan (and
3 under all plans maintained by members of the con-
4 trolled group of each contributing sponsor of the
5 plan). Such notice shall also set forth—

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

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

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

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

1 “(ii) the aggregate total of the fund-
2 ing targets of such plans, as of the end of
3 such plan year, taking into account only
4 benefits to which participants and bene-
5 ficiaries have a nonforfeitable right, and

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

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

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

15 “(B) FUNDING TARGET.—The term ‘fund-
16 ing target’ has the meaning provided under sec-
17 tion 303(d)(1).

18 “(C) FUNDING TARGET ATTAINMENT PER-
19 CENTAGE.—The term ‘funding target attain-
20 ment percentage’ has the meaning provided in
21 section 303(d)(2).

22 “(D) AGGREGATE FUNDING TARGETS AT-
23 TAINMENT PERCENTAGE.—The term ‘aggregate
24 funding targets attainment percentage’ with re-
25 spect to a contributing sponsor for a plan year

1 is the percentage, taking into account all plans
2 maintained by the contributing sponsor and the
3 members of its controlled group as of the end
4 of such plan year, which

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

8 “(ii) the aggregate total of the fund-
9 ing targets of such plans, as of the end of
10 such plan year, taking into account only
11 benefits to which participants and bene-
12 ficiaries have a nonforfeitable right.

13 “(E) AT-RISK STATUS.—The term ‘at-risk
14 status’ has the meaning provided in section
15 303(i)(3).

16 “(3) COMPLIANCE.—

17 “(A) IN GENERAL.—Any notice required to
18 be provided under paragraph (1) may be pro-
19 vided in written, electronic, or other appropriate
20 form to the extent such form is reasonably ac-
21 cessible to individuals to whom the information
22 is required to be provided.

23 “(B) LIMITATIONS.—In no case shall a
24 participant or beneficiary be entitled under this
25 subsection to receive more than one notice de-

1 scribed in paragraph (1) during any one 12-
2 month period. The person required to provide
3 such notice may make a reasonable charge to
4 cover copying, mailing, and other costs of fur-
5 nishing such notice pursuant to paragraph (1).
6 The corporation may by regulations prescribe
7 the maximum amount which will constitute a
8 reasonable charge under the preceding sentence.

9 “(4) NOTICE TO CONGRESS.—Concurrent with
10 the provision of any notice under paragraph (1),
11 such person shall provide such notice to the Com-
12 mittee on Education and the Workforce and the
13 Committee on Ways and Means of the House of
14 Representatives and the Committee on Health, Edu-
15 cation, Labor, and Pensions and the Committee on
16 Finance of the Senate, which shall be treated as ma-
17 terials provided in executive session.”.

18 (c) EFFECTIVE DATE.—The amendment made by
19 this section shall apply with respect to plan years begin-
20 ning after December 31, 2006.

1 **TITLE VI—INVESTMENT ADVICE**

2 **SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT IN-**
3 **COME SECURITY ACT OF 1974 PROVIDING**
4 **PROHIBITED TRANSACTION EXEMPTION FOR**
5 **PROVISION OF INVESTMENT ADVICE.**

6 (a) EXEMPTION FROM PROHIBITED TRANS-
7 ACTIONS.—Section 408(b) of the Employee Retirement
8 Income Security Act of 1974 (29 U.S.C. 1108(b)) is
9 amended by adding at the end the following new para-
10 graph:

11 “(14)(A) Any transaction described in subpara-
12 graph (B) in connection with the provision of invest-
13 ment advice described in section 3(21)(A)(ii), in any
14 case in which—

15 “(i) the investment of assets of the plan is
16 subject to the direction of plan participants or
17 beneficiaries,

18 “(ii) the advice is provided to the plan or
19 a participant or beneficiary of the plan by a fi-
20 duciary adviser in connection with any sale, ac-
21 quisition, or holding of a security or other prop-
22 erty for purposes of investment of plan assets,
23 and

1 “(iii) the requirements of subsection (g)
2 are met in connection with the provision of the
3 advice.

4 “(B) The transactions described in this sub-
5 paragraph are the following:

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

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

14 “(iii) the direct or indirect receipt of
15 fees or other compensation by the fiduciary
16 adviser or an affiliate thereof (or any em-
17 ployee, agent, or registered representative
18 of the fiduciary adviser or affiliate) in con-
19 nection with the provision of the advice or
20 in connection with a sale, acquisition, or
21 holding of a security or other property pur-
22 suant to the advice.”.

23 (b) REQUIREMENTS.—Section 408 of such Act is
24 amended further by adding at the end the following new
25 subsection:

1 “(g) REQUIREMENTS RELATING TO PROVISION OF
2 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

3 “(1) IN GENERAL.—The requirements of this
4 subsection are met in connection with the provision
5 of investment advice referred to in section
6 3(21)(A)(ii), provided to an employee benefit plan or
7 a participant or beneficiary of an employee benefit
8 plan by a fiduciary adviser with respect to the plan
9 in connection with any sale, acquisition, or holding
10 of a security or other property for purposes of in-
11 vestment of amounts held by the plan, if—

12 “(A) in the case of the initial provision of
13 the advice with regard to the security or other
14 property by the fiduciary adviser to the plan,
15 participant, or beneficiary, the fiduciary adviser
16 provides to the recipient of the advice, at a time
17 reasonably contemporaneous with the initial
18 provision of the advice, a written notification
19 (which may consist of notification by means of
20 electronic communication)—

21 “(i) of all fees or other compensation
22 relating to the advice that the fiduciary ad-
23 viser or any affiliate thereof is to receive
24 (including compensation provided by any
25 third party) in connection with the provi-

1 sion of the advice or in connection with the
2 sale, acquisition, or holding of the security
3 or other property,

4 “(ii) of any material affiliation or con-
5 tractual relationship of the fiduciary ad-
6 viser or affiliates thereof in the security or
7 other property,

8 “(iii) of any limitation placed on the
9 scope of the investment advice to be pro-
10 vided by the fiduciary adviser with respect
11 to any such sale, acquisition, or holding of
12 a security or other property,

13 “(iv) of the types of services provided
14 by the fiduciary adviser in connection with
15 the provision of investment advice by the
16 fiduciary adviser,

17 “(v) that the adviser is acting as a fi-
18 duciary of the plan in connection with the
19 provision of the advice, and

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

1 “(B) the fiduciary adviser provides appro-
2 priate disclosure, in connection with the sale,
3 acquisition, or holding of the security or other
4 property, in accordance with all applicable secu-
5 rities laws,

6 “(C) the sale, acquisition, or holding oc-
7 curs solely at the direction of the recipient of
8 the advice,

9 “(D) the compensation received by the fi-
10 duciary adviser and affiliates thereof in connec-
11 tion with the sale, acquisition, or holding of the
12 security or other property is reasonable, and

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

17 “(2) STANDARDS FOR PRESENTATION OF IN-
18 FORMATION.—

19 “(A) IN GENERAL.—The notification re-
20 quired to be provided to participants and bene-
21 ficiaries under paragraph (1)(A) shall be writ-
22 ten in a clear and conspicuous manner and in
23 a manner calculated to be understood by the av-
24 erage plan participant and shall be sufficiently
25 accurate and comprehensive to reasonably ap-

1 prise such participants and beneficiaries of the
2 information required to be provided in the noti-
3 fication.

4 “(B) MODEL FORM FOR DISCLOSURE OF
5 FEES AND OTHER COMPENSATION.—The Sec-
6 retary shall issue a model form for the disclo-
7 sure of fees and other compensation required in
8 paragraph (1)(A)(i) which meets the require-
9 ments of subparagraph (A).

10 “(3) EXEMPTION CONDITIONED ON MAKING RE-
11 QUIRED INFORMATION AVAILABLE ANNUALLY, ON
12 REQUEST, AND IN THE EVENT OF MATERIAL
13 CHANGE.—The requirements of paragraph (1)(A)
14 shall be deemed not to have been met in connection
15 with the initial or any subsequent provision of advice
16 described in paragraph (1) to the plan, participant,
17 or beneficiary if, at any time during the provision of
18 advisory services to the plan, participant, or bene-
19 ficiary, the fiduciary adviser fails to maintain the in-
20 formation described in clauses (i) through (iv) of
21 subparagraph (A) in currently accurate form and in
22 the manner described in paragraph (2) or fails—

23 “(A) to provide, without charge, such cur-
24 rently accurate information to the recipient of
25 the advice no less than annually,

1 “(B) to make such currently accurate in-
2 formation available, upon request and without
3 charge, to the recipient of the advice, or

4 “(C) in the event of a material change to
5 the information described in clauses (i) through
6 (iv) of paragraph (1)(A), to provide, without
7 charge, such currently accurate information to
8 the recipient of the advice at a time reasonably
9 contemporaneous to the material change in in-
10 formation.

11 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
12 OF COMPLIANCE.—A fiduciary adviser referred to in
13 paragraph (1) who has provided advice referred to in
14 such paragraph shall, for a period of not less than
15 6 years after the provision of the advice, maintain
16 any records necessary for determining whether the
17 requirements of the preceding provisions of this sub-
18 section and of subsection (b)(14) have been met. A
19 transaction prohibited under section 406 shall not be
20 considered to have occurred solely because the
21 records are lost or destroyed prior to the end of the
22 6-year period due to circumstances beyond the con-
23 trol of the fiduciary adviser.

24 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
25 TAIN OTHER FIDUCIARIES.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), a plan sponsor or other person who
3 is a fiduciary (other than a fiduciary adviser)
4 shall not be treated as failing to meet the re-
5 quirements of this part solely by reason of the
6 provision of investment advice referred to in
7 section 3(21)(A)(ii) (or solely by reason of con-
8 tracting for or otherwise arranging for the pro-
9 vision of the advice), if—

10 “(i) the advice is provided by a fidu-
11 ciary adviser pursuant to an arrangement
12 between the plan sponsor or other fidu-
13 ciary and the fiduciary adviser for the pro-
14 vision by the fiduciary adviser of invest-
15 ment advice referred to in such section,

16 “(ii) the terms of the arrangement re-
17 quire compliance by the fiduciary adviser
18 with the requirements of this subsection,
19 and

20 “(iii) the terms of the arrangement
21 include a written acknowledgment by the
22 fiduciary adviser that the fiduciary adviser
23 is a fiduciary of the plan with respect to
24 the provision of the advice.

1 “(B) CONTINUED DUTY OF PRUDENT SE-
2 LECTION OF ADVISER AND PERIODIC REVIEW.—
3 Nothing in subparagraph (A) shall be construed
4 to exempt a plan sponsor or other person who
5 is a fiduciary from any requirement of this part
6 for the prudent selection and periodic review of
7 a fiduciary adviser with whom the plan sponsor
8 or other person enters into an arrangement for
9 the provision of advice referred to in section
10 3(21)(A)(ii). The plan sponsor or other person
11 who is a fiduciary has no duty under this part
12 to monitor the specific investment advice given
13 by the fiduciary adviser to any particular recipi-
14 ent of the advice.

15 “(C) AVAILABILITY OF PLAN ASSETS FOR
16 PAYMENT FOR ADVICE.—Nothing in this part
17 shall be construed to preclude the use of plan
18 assets to pay for reasonable expenses in pro-
19 viding investment advice referred to in section
20 3(21)(A)(ii).

21 “(6) DEFINITIONS.—For purposes of this sub-
22 section and subsection (b)(14)—

23 “(A) FIDUCIARY ADVISER.—The term ‘fi-
24 duciary adviser’ means, with respect to a plan,
25 a person who is a fiduciary of the plan by rea-

1 son of the provision of investment advice by the
2 person to the plan or to a participant or bene-
3 ficiary and who is—

4 “(i) registered as an investment ad-
5 viser under the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–1 et seq.) or under
7 the laws of the State in which the fiduciary
8 maintains its principal office and place of
9 business,

10 “(ii) a bank or similar financial insti-
11 tution referred to in section 408(b)(4) or a
12 savings association (as defined in section
13 3(b)(1) of the Federal Deposit Insurance
14 Act (12 U.S.C. 1813(b)(1))), but only if
15 the advice is provided through a trust de-
16 partment of the bank or similar financial
17 institution or savings association which is
18 subject to periodic examination and review
19 by Federal or State banking authorities,

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

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

1 “(v) an affiliate of a person described
2 in any of clauses (i) through (iv), or

3 “(vi) an employee, agent, or registered
4 representative of a person described in any
5 of clauses (i) through (v) who satisfies the
6 requirements of applicable insurance,
7 banking, and securities laws relating to the
8 provision of the advice.

9 “(B) AFFILIATE.—The term ‘affiliate’ of
10 another entity means an affiliated person of the
11 entity (as defined in section 2(a)(3) of the In-
12 vestment Company Act of 1940 (15 U.S.C.
13 80a–2(a)(3))).

14 “(C) REGISTERED REPRESENTATIVE.—
15 The term ‘registered representative’ of another
16 entity means a person described in section
17 3(a)(18) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78c(a)(18)) (substituting the
19 entity for the broker or dealer referred to in
20 such section) or a person described in section
21 202(a)(17) of the Investment Advisers Act of
22 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
23 the entity for the investment adviser referred to
24 in such section).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to advice referred to
3 in section 3(21)(A)(ii) of the Employee Retirement In-
4 come Security Act of 1974 provided on or after January
5 1, 2006.

6 **SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF**
7 **1986 PROVIDING PROHIBITED TRANSACTION**
8 **EXEMPTION FOR PROVISION OF INVESTMENT**
9 **ADVICE.**

10 (a) EXEMPTION FROM PROHIBITED TRANS-
11 ACTIONS.—Subsection (d) of section 4975 of the Internal
12 Revenue Code of 1986 (relating to exemptions from tax
13 on prohibited transactions), as amended by this Act, is
14 amended—

15 (1) in paragraph (17), by striking “or” at the
16 end;

17 (2) in paragraph (18), by striking the period at
18 the end and inserting “; or”; and

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

21 “(19) any transaction described in subsection
22 (f)(10)(A) in connection with the provision of invest-
23 ment advice described in subsection (e)(3)(B)(i), in
24 any case in which—

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

4 “(B) the advice is provided to the plan or
5 a participant or beneficiary of the plan by a fi-
6 duciary adviser in connection with any sale, ac-
7 quisition, or holding of a security or other prop-
8 erty for purposes of investment of plan assets,
9 and

10 “(C) the requirements of subsection
11 (f)(10)(B) are met in connection with the provi-
12 sion of the advice.”.

13 (b) ALLOWED TRANSACTIONS AND REQUIRE-
14 MENTS.—Subsection (f) of such section 4975 (relating to
15 other definitions and special rules), as amended by this
16 Act, is amended by adding at the end the following new
17 paragraph:

18 “(10) PROVISIONS RELATING TO INVESTMENT
19 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

20 “(A) TRANSACTIONS ALLOWABLE IN CON-
21 NECTION WITH INVESTMENT ADVICE PROVIDED
22 BY FIDUCIARY ADVISERS.—The transactions re-
23 ferred to in subsection (d)(19), in connection
24 with the provision of investment advice by a fi-
25 duciary adviser, are the following:

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

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

9 “(iii) the direct or indirect receipt of
10 fees or other compensation by the fiduciary
11 adviser or an affiliate thereof (or any em-
12 ployee, agent, or registered representative
13 of the fiduciary adviser or affiliate) in con-
14 nection with the provision of the advice or
15 in connection with a sale, acquisition, or
16 holding of a security or other property pur-
17 suant to the advice.

18 “(B) REQUIREMENTS RELATING TO PROVI-
19 SION OF INVESTMENT ADVICE BY FIDUCIARY
20 ADVISERS.—The requirements of this subpara-
21 graph (referred to in subsection (d)(19)(C)) are
22 met in connection with the provision of invest-
23 ment advice referred to in subsection (e)(3)(B),
24 provided to a plan or a participant or bene-
25 ficiary of a plan by a fiduciary adviser with re-

1 spect to the plan in connection with any sale,
2 acquisition, or holding of a security or other
3 property for purposes of investment of amounts
4 held by the plan, if—

5 “(i) in the case of the initial provision
6 of the advice with regard to the security or
7 other property by the fiduciary adviser to
8 the plan, participant, or beneficiary, the fi-
9 duciary adviser provides to the recipient of
10 the advice, at a time reasonably contem-
11 poraneous with the initial provision of the
12 advice, a written notification (which may
13 consist of notification by means of elec-
14 tronic communication)—

15 “(I) of all fees or other com-
16 pensation relating to the advice that
17 the fiduciary adviser or any affiliate
18 thereof is to receive (including com-
19 pensation provided by any third
20 party) in connection with the provi-
21 sion of the advice or in connection
22 with the sale, acquisition, or holding
23 of the security or other property,

24 “(II) of any material affiliation
25 or contractual relationship of the fidu-

1 ciary adviser or affiliates thereof in
2 the security or other property,

3 “(III) of any limitation placed on
4 the scope of the investment advice to
5 be provided by the fiduciary adviser
6 with respect to any such sale, acquisi-
7 tion, or holding of a security or other
8 property,

9 “(IV) of the types of services
10 provided by the fiduciary adviser in
11 connection with the provision of in-
12 vestment advice by the fiduciary ad-
13 viser,

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

17 “(VI) that a recipient of the ad-
18 vice may separately arrange for the
19 provision of advice by another adviser,
20 that could have no material affiliation
21 with and receive no fees or other com-
22 pensation in connection with the secu-
23 rity or other property,

24 “(ii) the fiduciary adviser provides ap-
25 propriate disclosure, in connection with the

1 sale, acquisition, or holding of the security
2 or other property, in accordance with all
3 applicable securities laws,

4 “(iii) the sale, acquisition, or holding
5 occurs solely at the direction of the recipi-
6 ent of the advice,

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

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

16 “(C) STANDARDS FOR PRESENTATION OF
17 INFORMATION.—The notification required to be
18 provided to participants and beneficiaries under
19 subparagraph (B)(i) shall be written in a clear
20 and conspicuous manner and in a manner cal-
21 culated to be understood by the average plan
22 participant and shall be sufficiently accurate
23 and comprehensive to reasonably apprise such
24 participants and beneficiaries of the information
25 required to be provided in the notification.

1 “(D) EXEMPTION CONDITIONED ON MAK-
2 ING REQUIRED INFORMATION AVAILABLE ANNU-
3 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
4 TERIAL CHANGE.—The requirements of sub-
5 paragraph (B)(i) shall be deemed not to have
6 been met in connection with the initial or any
7 subsequent provision of advice described in sub-
8 paragraph (B) to the plan, participant, or bene-
9 ficiary if, at any time during the provision of
10 advisory services to the plan, participant, or
11 beneficiary, the fiduciary adviser fails to main-
12 tain the information described in subclauses (I)
13 through (IV) of subparagraph (B)(i) in cur-
14 rently accurate form and in the manner re-
15 quired by subparagraph (C), or fails—

16 “(i) to provide, without charge, such
17 currently accurate information to the re-
18 cipient of the advice no less than annually,

19 “(ii) to make such currently accurate
20 information available, upon request and
21 without charge, to the recipient of the ad-
22 vice, or

23 “(iii) in the event of a material
24 change to the information described in
25 subclauses (I) through (IV) of subpara-

1 graph (B)(i), to provide, without charge,
2 such currently accurate information to the
3 recipient of the advice at a time reasonably
4 contemporaneous to the material change in
5 information.

6 “(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser
7 referred to in subparagraph (B) who has provided advice referred to in such subparagraph
8 shall, for a period of not less than 6 years after the provision of the advice, maintain any
9 records necessary for determining whether the requirements of the preceding provisions of this
10 paragraph and of subsection (d)(19) have been met. A transaction prohibited under subsection
11 (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed
12 prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary
13 adviser.
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21 “(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor
22 or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as fail-
23 ing to meet the requirements of this section
24
25

1 solely by reason of the provision of investment
2 advice referred to in subsection (e)(3)(B) (or
3 solely by reason of contracting for or otherwise
4 arranging for the provision of the advice), if—

5 “(i) the advice is provided by a fidu-
6 ciary adviser pursuant to an arrangement
7 between the plan sponsor or other fidu-
8 ciary and the fiduciary adviser for the pro-
9 vision by the fiduciary adviser of invest-
10 ment advice referred to in such section,

11 “(ii) the terms of the arrangement re-
12 quire compliance by the fiduciary adviser
13 with the requirements of this paragraph,

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

19 “(iv) the requirements of part 4 of
20 subtitle B of title I of the Employee Re-
21 tirement Income Security Act of 1974 are
22 met in connection with the provision of
23 such advice.

24 “(G) DEFINITIONS.—For purposes of this
25 paragraph and subsection (d)(19)—

1 “(i) FIDUCIARY ADVISER.—The term
2 ‘fiduciary adviser’ means, with respect to a
3 plan, a person who is a fiduciary of the
4 plan by reason of the provision of invest-
5 ment advice by the person to the plan or
6 to a participant or beneficiary and who
7 is—

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

14 “(II) a bank or similar financial
15 institution referred to in subsection
16 (d)(4) or a savings association (as de-
17 fined in section 3(b)(1) of the Federal
18 Deposit Insurance Act (12 U.S.C.
19 1813(b)(1))), but only if the advice is
20 provided through a trust department
21 of the bank or similar financial insti-
22 tution or savings association which is
23 subject to periodic examination and
24 review by Federal or State banking
25 authorities,

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

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

8 “(V) an affiliate of a person de-
9 scribed in any of subclauses (I)
10 through (IV), or

11 “(VI) an employee, agent, or reg-
12 istered representative of a person de-
13 scribed in any of subclauses (I)
14 through (V) who satisfies the require-
15 ments of applicable insurance, bank-
16 ing, and securities laws relating to the
17 provision of the advice.

18 “(ii) AFFILIATE.—The term ‘affiliate’
19 of another entity means an affiliated per-
20 son of the entity (as defined in section
21 2(a)(3) of the Investment Company Act of
22 1940 (15 U.S.C. 80a-2(a)(3))).

23 “(iii) REGISTERED REPRESENTA-
24 TIVE.—The term ‘registered representa-
25 tive’ of another entity means a person de-

1 scribed in section 3(a)(18) of the Securi-
2 ties Exchange Act of 1934 (15 U.S.C.
3 78c(a)(18)) (substituting the entity for the
4 broker or dealer referred to in such sec-
5 tion) or a person described in section
6 202(a)(17) of the Investment Advisers Act
7 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-
8 stituting the entity for the investment ad-
9 viser referred to in such section).”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to advice referred to
12 in section 4975(c)(3)(B) of the Internal Revenue Code of
13 1986 provided on or after January 1, 2006.

14 **TITLE VII—BENEFIT ACCRUAL**
15 **STANDARDS**

16 **SEC. 701. BENEFIT ACCRUAL STANDARDS.**

17 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
18 INCOME SECURITY ACT OF 1974.—

19 (1) RULES RELATING TO REDUCTION IN RATE
20 OF BENEFIT ACCRUAL.—Section 204(b)(1)(H) of the
21 Employee Retirement Income Security Act of 1974
22 (29 U.S.C. 1054(b)(1)(H)) is amended by adding at
23 the end the following new clauses:

24 “(vii)(I) A plan shall not be treated as failing to meet
25 the requirements of clause (i) if a participant’s entire ac-

1 accrued benefit, as determined as of any date under the for-
2 mula for determining benefits as set forth in the text of
3 the plan documents, would be equal to or greater than
4 that of any similarly situated, younger individual.

5 “(II) For purposes of this clause, an individual is
6 similarly situated to a participant if such individual is
7 identical to such participant in every respect (including pe-
8 riod of service, compensation, position, date of hire, work
9 history, and any other respect) except for age.

10 “(III) In determining the entire accrued benefit for
11 purposes of this clause, the subsidized portion of any early
12 retirement benefit (including any early retirement subsidy
13 that is fully or partially included or reflected in an employ-
14 ee’s opening balance or other transition benefits) shall be
15 disregarded.

16 “(IV) In determining the entire accrued benefit for
17 purposes of this clause, such benefit may be calculated as
18 the present value of accrued benefits projected to normal
19 retirement age, as an account balance, or as the current
20 value of the accumulated percentage of the employee’s
21 final average compensation.

22 “(viii) A plan shall not be treated as failing to meet
23 the requirements of this subparagraph solely because the
24 plan provides allowable offsets against those benefits
25 under the plan which are attributable to employer con-

1 tributions, based on benefits which are provided under
2 title II of the Social Security Act, under the Railroad Re-
3 tirement Act of 1974, under another plan described in sec-
4 tion 401(a) of the Internal Revenue Code of 1986 main-
5 tained by the same employer, under any retirement pro-
6 gram for officers or employees of the Federal Government
7 or of the government of any State or political subdivision
8 thereof, or under such other arrangements as the Sec-
9 retary of the Treasury may provide. For purposes of this
10 clause, allowable offsets based on such benefits consist of
11 offsets equal to all or part of the actual benefit payment
12 amounts, reasonable projections or estimations of such
13 benefit payment amounts, or actuarial equivalents of such
14 actual benefit payment amounts, projections, or esti-
15 mations (determined on the basis of reasonable actuarial
16 assumptions).

17 “(ix) A plan shall not be treated as failing to meet
18 the requirements of this subparagraph solely because the
19 plan provides a disparity in contributions or benefits with
20 respect to which the requirements of section 401(l) of the
21 Internal Revenue Code of 1986 are met.

22 “(x)(I) A plan shall not be treated as failing to meet
23 the requirements of this subparagraph solely because the
24 plan provides for indexing of accrued benefits under the
25 plan.

1 “(II) Except in the case of any benefit provided in
2 the form of a variable annuity, subclause (I) shall not
3 apply with respect to any indexing which results in an ac-
4 crued benefit less than the accrued benefit determined
5 without regard to such indexing.

6 “(III) For purposes of this clause, the term ‘indexing’
7 means, in connection with an accrued benefit, the periodic
8 adjustment of the accrued benefit by means of the applica-
9 tion of a recognized investment index or methodology.”.

10 (2) DETERMINATIONS OF ACCRUED BENEFIT AS
11 BALANCE OF BENEFIT ACCOUNT.—Section 203 of
12 such Act (29 U.S.C. 1053) is amended by adding at
13 the end the following new subsection:

14 “(f)(1) A defined benefit plan under which the ac-
15 crued benefit payable under the plan upon distribution (or
16 any portion thereof) is expressed as the balance of a hypo-
17 thetical account maintained for the participant shall not
18 be treated as failing to meet the requirements of sub-
19 section (a)(2), section 204(c) (but only in the case of a
20 plan which does not provide for employee contributions),
21 or section 205(g) solely because of the amount actually
22 made available for such distribution under the terms of
23 the plan, in any case in which the applicable interest rate
24 that would be used under the terms of the plan to project

1 the amount of the participant's account balance to normal
2 retirement age is not greater than a market rate of return.

3 “(2) The Secretary of the Treasury may provide by
4 regulation for rules governing the calculation of a market
5 rate of return for purposes of paragraph (1) and for per-
6 missible methods of crediting interest to the account (in-
7 cluding fixed or variable interest rates) resulting in effec-
8 tive rates of return meeting the requirements of paragraph
9 (1).”.

10 (b) AMENDMENTS TO THE INTERNAL REVENUE
11 CODE OF 1986.—

12 (1) RULES RELATING TO REDUCTION IN RATE
13 OF BENEFIT ACCRUAL.—Subparagraph (H) of sec-
14 tion 411(b)(1) of the Internal Revenue Code of 1986
15 is amended by adding at the end the following new
16 clauses:

17 “(vi) COMPARISON TO SIMILARLY SIT-
18 UATED YOUNGER INDIVIDUAL.—

19 “(I) IN GENERAL.—A plan shall
20 not be treated as failing to meet the
21 requirements of clause (i) if a partici-
22 pant's entire accrued benefit, as deter-
23 mined as of any date under the for-
24 mula for determining benefits as set
25 forth in the text of the plan docu-

1 ments, would be equal to or greater
2 than that of any similarly situated,
3 younger individual.

4 “(II) SIMILARLY SITUATED.—
5 For purposes of this clause, an indi-
6 vidual is similarly situated to a partic-
7 ipant if such individual is identical to
8 such participant in every respect (in-
9 cluding period of service, compensa-
10 tion, position, date of hire, work his-
11 tory, and any other respect) except for
12 age.

13 “(III) DISREGARD OF SUB-
14 SIDIZED EARLY RETIREMENT BENE-
15 FITS.—In determining the entire ac-
16 crued benefit for purposes of this
17 clause, the subsidized portion of any
18 early retirement benefit (including any
19 early retirement subsidy that is fully
20 or partially included or reflected in an
21 employee’s opening balance or other
22 transition benefits) shall be dis-
23 regarded.

24 “(IV) ENTIRE ACCRUED BEN-
25 EFIT.—In determining the entire ac-

1 accrued benefit for purposes of this
2 clause, such benefit may be calculated
3 as the present value of accrued bene-
4 fits projected to normal retirement
5 age, as an account balance, or as the
6 current value of the accumulated per-
7 centage of the employee's final aver-
8 age compensation.

9 “(vii) CERTAIN OFFSETS PER-
10 MITTED.—A plan shall not be treated as
11 failing to meet the requirements of this
12 subparagraph solely because the plan pro-
13 vides allowable offsets against those bene-
14 fits under the plan which are attributable
15 to employer contributions, based on bene-
16 fits which are provided under title II of the
17 Social Security Act, under the Railroad
18 Retirement Act of 1974, under another
19 plan described in section 401(a) main-
20 tained by the same employer, under any
21 retirement program for officers or employ-
22 ees of the Federal Government or of the
23 government of any State or political sub-
24 division thereof, or under such other ar-
25 rangements as the Secretary may provide.

1 For purposes of this clause, allowable off-
2 sets based on such benefits consist of off-
3 sets equal to all or part of the actual ben-
4 efit payment amounts, reasonable projec-
5 tions or estimations of such benefit pay-
6 ment amounts, or actuarial equivalents of
7 such actual benefit payment amounts, pro-
8 jections, or estimations (determined on the
9 basis of reasonable actuarial assumptions).

10 “(viii) PERMITTED DISPARITIES IN
11 PLAN CONTRIBUTIONS OR BENEFITS.—A
12 plan shall not be treated as failing to meet
13 the requirements of this subparagraph
14 solely because the plan provides a disparity
15 in contributions or benefits with respect to
16 which the requirements of section 401(l)
17 are met.

18 “(ix) INDEXING PERMITTED.—

19 “(I) IN GENERAL.—A plan shall
20 not be treated as failing to meet the
21 requirements of this subparagraph
22 solely because the plan provides for
23 indexing of accrued benefits under the
24 plan.

1 “(II) PROTECTION OF ECONOMIC
2 VALUE.—Except in the case of any
3 benefit provided in the form of a vari-
4 able annuity, subclause (I) shall not
5 apply with respect to any indexing
6 which results in an accrued benefit
7 less than the accrued benefit deter-
8 mined without regard to such index-
9 ing.

10 “(III) INDEXING.—For purposes
11 of this clause, the term ‘indexing’
12 means, in connection with an accrued
13 benefit, the periodic adjustment of the
14 accrued benefit by means of the appli-
15 cation of a recognized investment
16 index or methodology.”.

17 (2) DETERMINATIONS OF ACCRUED BENEFIT AS
18 BALANCE OF BENEFIT ACCOUNT.—Subsection (a) of
19 section 411 of such Code is amended by adding at
20 the end the following new paragraph:

21 “(13) DETERMINATIONS OF ACCRUED BENEFIT
22 AS BALANCE OF BENEFIT ACCOUNT.—

23 “(A) IN GENERAL.—A defined benefit plan
24 under which the accrued benefit payable under
25 the plan upon distribution (or any portion

1 thereof) is expressed as the balance of a hypo-
2 thetical account maintained for the participant
3 shall not be treated as failing to meet the re-
4 quirements of subsection (a)(2), subsection (c)
5 (but only in the case of a plan which does not
6 provide for employee contributions), or section
7 417(e) solely because of the amount actually
8 made available for such distribution under the
9 terms of the plan, in any case in which the ap-
10 plicable interest rate that would be used under
11 the terms of the plan to project the amount of
12 the participant's account balance to normal re-
13 tirement age is not greater than a market rate
14 of return.

15 “(B) REGULATIONS.—The Secretary may
16 provide by regulation for rules governing the
17 calculation of a market rate of return for pur-
18 poses of subparagraph (A) and for permissible
19 methods of crediting interest to the account (in-
20 cluding fixed or variable interest rates) result-
21 ing in effective rates of return meeting the re-
22 quirements of subparagraph (A).”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to periods beginning on or after
25 June 29, 2005.

1 **TITLE VIII—DEDUCTION**
2 **LIMITATIONS**

3 **SEC. 801. INCREASE IN DEDUCTION LIMITS.**

4 (a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-
5 EMPLOYER PLANS.—Section 404 of the Internal Revenue
6 Code of 1986 (relating to deduction for contributions of
7 an employer to an employees’ trust or annuity plan and
8 compensation under a deferred payment plan) is
9 amended—

10 (1) in subsection (a)(1)(A), by inserting “in the
11 case of a defined benefit plan other than a multiem-
12 ployer plan, in an amount determined under sub-
13 section (o), and in the case of any other plan” after
14 “section 501(a),”, and

15 (2) by inserting at the end the following new
16 subsection:

17 “(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER
18 PLANS.—For purposes of subsection (a)(1)(A)—

19 “(1) IN GENERAL.—In the case of a defined
20 benefit plan to which subsection (a)(1)(A) applies
21 (other than a multiemployer plan), the amount de-
22 termined under this subsection for any taxable year
23 shall be equal to the amount determined under para-
24 graph (2) with respect to each plan year ending with
25 or within the taxable year.

1 “(2) DETERMINATION OF AMOUNT.—The
2 amount determined under this paragraph for any
3 plan year shall be equal to the excess (if any) of—
4 “(A) the greater of—
5 “(i) the sum of—
6 “(I) 150 percent of the funding
7 target applicable to the plan for such
8 plan year, determined under section
9 430, plus
10 “(II) the target normal cost ap-
11 plicable to the plan for such plan
12 year, determined under section
13 430(b), or
14 “(ii) in the case of a plan that is not
15 in an at-risk status (as determined under
16 430(i)), the sum of—
17 “(I) the funding target which
18 would be applicable to the plan for
19 such plan year if such plan were in an
20 at-risk status, determined under sec-
21 tion 430(d) (with regard to section
22 430(i)), plus
23 “(II) the target normal cost
24 which would be applicable to the plan
25 for such plan year if such plan were

1 in an at-risk status, determined under
2 section 430(d) (with regard to section
3 430(i)), over

4 “(B) the value of the plan assets (deter-
5 mined under section 430(g)).

6 “(3) SPECIAL RULE FOR TERMINATING
7 PLANS.—In the case of a plan which, subject to sec-
8 tion 4041 of the Employee Retirement Income Secu-
9 rity Act of 1974, terminates during the plan year,
10 the amount determined under paragraph (2) shall
11 not be less than the amount required to make the
12 plan sufficient for benefit liabilities (within the
13 meaning of section 4041(d) of such Act).

14 “(4) DEFINITIONS.—Any term used in this sub-
15 section which is also used in section 430 shall have
16 the same meaning given such term by section 430.”.

17 (b) INCREASE IN DEDUCTION LIMIT FOR MULTIEM-
18 PLOYER PLANS.—Section 404(a)(1)(D) of such Code is
19 amended to read as follows:

20 “(D) MINIMUM DEDUCTION FOR MULTIEM-
21 PLOYER PLANS.—In the case of a defined ben-
22 efit plan which is a multiemployer plan, except
23 as provided in regulations, the maximum
24 amount deductible under the limitations of this

1 paragraph shall not be less than the excess (if
2 any) of—

3 “(i) 140 percent of the current liabil-
4 ity of the plan determined under section
5 431(c)(6)(D), over

6 “(ii) the value of the plan’s assets de-
7 termined under section 431(c)(2).”.

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)(D)”,

21 (D) by striking “section 412(c)(7)(A)” and
22 inserting “section 431(c)(6)(A)”, and

23 (E) by striking “section 412” and insert-
24 ing “section 431”.

1 (3) Section 404(a)(1) of such Code is amended
2 by striking subparagraph (F).

3 (4) Section 404(a)(7) of such Code is
4 amended—

5 (A) in subparagraph (A)(ii), by striking
6 “for the plan year” and all that follows and in-
7 serting “which are multiemployer plans for the
8 plan year which ends with or within such tax-
9 able year (or for any prior plan year) and the
10 maximum amount of employer contributions al-
11 lowable under subsection (o) with respect to any
12 such defined benefit plans which are not multi-
13 employer plans for the plan year.”,

14 (B) by striking “section 412(l)” in the last
15 sentence of subparagraph (A) and inserting
16 “paragraph (1)(D)(ii)”, and

17 (C) by striking subparagraph (D) and in-
18 serting:

19 “(D) INSURANCE CONTRACT PLANS.—For
20 purposes of this paragraph, a plan described in
21 section 412(e)(3) shall be treated as a defined
22 benefit plan.”.

23 (5) Section 404A(g)(3)(A) of such Code is
24 amended by striking “paragraphs (3) and (7) of sec-

1 such plans in such preceding taxable
2 years.”.

3 (b) CONFORMING AMENDMENTS.—Subparagraph (A)
4 of section 4972(c)(6) of such Code (relating to nondeduct-
5 ible contributions) is amended to read as follows:

6 “(A) so much of the contributions to 1 or
7 more defined contribution plans which are not
8 deductible when contributed solely because of
9 section 404(a)(7) as does not exceed the
10 amount of contributions described in section
11 401(m)(4)(A), or”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to contributions for taxable years
14 beginning after December 31, 2006.

15 **TITLE IX—ENHANCED RETIRE-**
16 **MENTS SAVINGS AND DE-**
17 **FINED CONTRIBUTION PLANS**

18 **SEC. 901. PENSIONS AND INDIVIDUAL RETIREMENT AR-**
19 **RANGEMENT PROVISIONS OF ECONOMIC**
20 **GROWTH AND TAX RELIEF RECONCILIATION**
21 **ACT OF 2001 MADE PERMANENT.**

22 Title IX of the Economic Growth and Tax Relief Rec-
23 onciliation Act of 2001 shall not apply to the provisions
24 of, and amendments made by, subtitles (A) through (F)

1 of title VI of such Act (relating to pension and individual
2 retirement arrangement provisions).

3 **SEC. 902. SAVER'S CREDIT.**

4 (a) PERMANENCY.—Section 25B of the Internal Rev-
5 enue Code of 1986 (relating to elective deferrals and IRA
6 contributions by certain individuals) is amended by strik-
7 ing subsection (h).

8 (b) VOLUNTARY DEPOSIT INTO QUALIFIED AC-
9 COUNT.—

10 (1) Section 25B of such Code, as amended by
11 subsection (a), is further amended by adding at the
12 end the following new subsection:

13 “(h) VOLUNTARY DEPOSIT INTO QUALIFIED AC-
14 COUNT.—

15 “(1) IN GENERAL.—So much of any overpay-
16 ment under section 6401(b) as does not exceed the
17 amount allowed as a tax credit under subsection (a)
18 shall, at the election of the taxpayer, be paid on be-
19 half of the individual taxpayer to an applicable re-
20 tirement plan designated by the individual, except
21 that in the case of a joint return, each spouse shall
22 be entitled to designate an applicable retirement
23 plan with respect to payments attributable to such
24 spouse.

1 “(2) APPLICABLE RETIREMENT PLAN.—For
2 purposes of this subsection, the term ‘applicable re-
3 tirement plan’ means any eligible retirement plan
4 (as defined in section 402(e)(8)(B)) that elects to
5 accept deposits under this subsection.”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by paragraph (1) shall apply to taxable years begin-
8 ning after December 31, 2006.

9 **SEC. 903. INCREASING PARTICIPATION THROUGH AUTO-**
10 **MATIC CONTRIBUTION ARRANGEMENTS.**

11 (a) IN GENERAL.—Section 401(k) of the Internal
12 Revenue Code of 1986 (relating to cash or deferred ar-
13 rangement) is amended by adding at the end the following
14 new paragraph:

15 “(13) ALTERNATIVE METHOD FOR AUTOMATIC
16 CONTRIBUTION ARRANGEMENTS TO MEET NON-
17 DISCRIMINATION REQUIREMENTS.—

18 “(A) IN GENERAL.—A qualified automatic
19 contribution arrangement shall be treated as
20 meeting the requirements of paragraph
21 (3)(A)(ii).

22 “(B) QUALIFIED AUTOMATIC CONTRIBU-
23 TION ARRANGEMENT.—For purposes of this
24 paragraph, the term ‘qualified automatic con-
25 tribution arrangement’ means any cash or de-

1 ferred arrangement which meets the require-
2 ments of subparagraphs (C) through (F).

3 “(C) AUTOMATIC DEFERRAL.—

4 “(i) IN GENERAL.—The requirements
5 of this subparagraph are met if, under the
6 arrangement, each employee eligible to
7 participate in the arrangement is treated
8 as having elected to have the employer
9 make elective contributions in an amount
10 equal to a qualified percentage of com-
11 pensation.

12 “(ii) ELECTION OUT.—The election
13 treated as having been made under clause
14 (i) shall cease to apply with respect to any
15 employee if such employee makes an af-
16 firmative election—

17 “(I) to not have such contribu-
18 tions made, or

19 “(II) to make elective contribu-
20 tions at a level specified in such af-
21 firmative election.

22 “(iii) QUALIFIED PERCENTAGE.—For
23 purposes of this subparagraph, the term
24 ‘qualified percentage’ means, with respect
25 to any employee, any percentage deter-

1 mined under the arrangement if such per-
2 centage is applied uniformly, does not ex-
3 ceed 10 percent, and is at least—

4 “(I) 3 percent during the period
5 ending on the last day of the first
6 plan year which begins after the date
7 on which the first elective contribution
8 described in clause (i) is made with
9 respect to such employee,

10 “(II) 4 percent during the first
11 plan year following the plan year de-
12 scribed in subclause (I),

13 “(III) 5 percent during the sec-
14 ond plan year following the plan year
15 described in subclause (I), and

16 “(IV) 6 percent during any sub-
17 sequent plan year.

18 “(iv) AUTOMATIC DEFERRAL FOR
19 CURRENT EMPLOYEES NOT REQUIRED.—
20 Clause (i) shall be applied without taking
21 into account any employee who was eligible
22 to participate in the arrangement (or a
23 predecessor arrangement) immediately be-
24 fore the date on which such arrangement
25 becomes a qualified automatic contribution

1 arrangement (determined after application
2 of this clause).

3 “(D) PARTICIPATION.—

4 “(i) IN GENERAL.—An arrangement
5 meets the requirements of this subpara-
6 graph for any year if, during the plan year
7 or the preceding plan year, elective con-
8 tributions are made on behalf of at least
9 70 percent of the employees eligible to par-
10 ticipate in the arrangement other than—

11 “(I) highly compensated employ-
12 ees, and

13 “(II) at the election of the plan
14 administrator, employees described in
15 subparagraph (C)(iv).

16 “(ii) FIRST PLAN YEAR.—An arrange-
17 ment (other than a successor arrangement)
18 shall be treated as meeting the require-
19 ments of this subparagraph with respect to
20 the first plan year with respect to which
21 such arrangement is a qualified automatic
22 contribution arrangement (determined
23 without regard to this subparagraph).

24 “(E) MATCHING OR NONELECTIVE CON-
25 TRIBUTIONS.—

1 “(i) IN GENERAL.—The requirements
2 of this subparagraph are met if, under the
3 arrangement, the employer—

4 “(I) makes matching contribu-
5 tions on behalf of each employee who
6 is not a highly compensated employee
7 in an amount equal to 50 percent of
8 the elective contributions of the em-
9 ployee to the extent such elective con-
10 tributions do not exceed 6 percent of
11 compensation, or

12 “(II) is required, without regard
13 to whether the employee makes an
14 elective contribution or employee con-
15 tribution, to make a contribution to a
16 defined contribution plan on behalf of
17 each employee who is not a highly
18 compensated employee and who is eli-
19 gible to participate in the arrange-
20 ment in an amount equal to at least
21 2 percent of the employee’s compensa-
22 tion.

23 “(ii) APPLICATION OF RULES FOR
24 MATCHING CONTRIBUTIONS.—The rules of

1 clauses (ii) and (iii) of paragraph (12)(B)
2 shall apply for purposes of clause (i)(I).

3 “(iii) WITHDRAWAL AND VESTING RE-
4 STRICTIONS.—An arrangement shall not be
5 treated as meeting the requirements of
6 clause (i) unless, with respect to employer
7 contributions (including matching con-
8 tributions) taken into account in deter-
9 mining whether the requirements of clause
10 (i) are met—

11 “(I) any employee who has com-
12 pleted at least 2 years of service
13 (within the meaning of section
14 411(a)) has a nonforfeitable right to
15 100 percent of the employee’s accrued
16 benefit derived from such employer
17 contributions, and

18 “(II) the requirements of sub-
19 paragraph (B) of paragraph (2) are
20 met with respect to all such employer
21 contributions.

22 “(iv) APPLICATION OF CERTAIN
23 OTHER RULES.—The rules of subpara-
24 graphs (E)(ii) and (F) of paragraph (12)

1 shall apply for purposes of subclauses (I)
2 and (II) of clause (i).

3 “(F) NOTICE REQUIREMENTS.—

4 “(i) IN GENERAL.—The requirements
5 of this subparagraph are met if, within a
6 reasonable period before each plan year,
7 each employee eligible to participate in the
8 arrangement for such year receives written
9 notice of the employee’s rights and obliga-
10 tions under the arrangement which—

11 “(I) is sufficiently accurate and
12 comprehensive to apprise the employee
13 of such rights and obligations, and

14 “(II) is written in a manner cal-
15 culated to be understood by the aver-
16 age employee to whom the arrange-
17 ment applies.

18 “(ii) TIMING AND CONTENT REQUIRE-
19 MENTS.—A notice shall not be treated as
20 meeting the requirements of clause (i) with
21 respect to an employee unless—

22 “(I) the notice explains the em-
23 ployee’s right under the arrangement
24 to elect not to have elective contribu-
25 tions made on the employee’s behalf

1 (or to elect to have such contributions
2 made at a different percentage),

3 “(II) in the case of an arrange-
4 ment under which the employee may
5 elect among 2 or more investment op-
6 tions, the notice explains how con-
7 tributions made under the arrange-
8 ment will be invested in the absence of
9 any investment election by the em-
10 ployee, and

11 “(III) the employee has a reason-
12 able period of time after receipt of the
13 notice described in subclauses (I) and
14 (II) and before the first elective con-
15 tribution is made to make either such
16 election.”.

17 (b) MATCHING CONTRIBUTIONS.—Section 401(m) of
18 such Code (relating to nondiscrimination test for matching
19 contributions and employee contributions) is amended by
20 redesignating paragraph (12) as paragraph (13) and by
21 inserting after paragraph (11) the following new para-
22 graph:

23 “(12) ALTERNATIVE METHOD FOR AUTOMATIC
24 CONTRIBUTION ARRANGEMENTS.—A defined con-
25 tribution plan shall be treated as meeting the re-

1 requirements of paragraph (2) with respect to match-
2 ing contributions if the plan—

3 “(A) is a qualified automatic contribution
4 arrangement (as defined in subsection (k)(13)),
5 and

6 “(B) meets the requirements of paragraph
7 (11)(B).”.

8 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY
9 PLANS.—

10 (1) ELECTIVE CONTRIBUTION RULE.—Clause
11 (i) of section 416(g)(4)(H) of such Code is amended
12 by inserting “or 401(k)(13)” after “section
13 401(k)(12)”.

14 (2) MATCHING CONTRIBUTION RULE.—Clause
15 (ii) of section 416(g)(4)(H) of such Code is amended
16 by inserting “or 401(m)(12)” after “section
17 401(m)(11)”.

18 (d) CORRECTIVE DISTRIBUTIONS.—

19 (1) IN GENERAL.—Section 414 of the Internal
20 Revenue Code of 1986 (relating to definitions and
21 special rules) is amended by adding at the end the
22 following new subsection:

23 “(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

24 “(1) IN GENERAL.—No tax shall be imposed
25 under section 72(t) on a distribution from an appli-

1 cable employer plan to the employee with respect to
2 whom such contribution relates if such distribution
3 does not exceed the erroneous automatic contribu-
4 tion amount and is made not later than the 1st
5 April 15 following the close of the taxable year in
6 which such contribution was made.

7 “(2) ERRONEOUS AUTOMATIC CONTRIBUTION
8 AMOUNT.—For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘erroneous
10 automatic contribution amount’ means the less-
11 er of—

12 “(i) the amount of automatic con-
13 tributions made during the applicable pe-
14 riod which the employee elects in a notice
15 to the plan administrator to treat as an er-
16 roneous automatic contribution amount for
17 purposes of this subsection, or

18 “(ii) \$500.

19 “(B) AUTOMATIC CONTRIBUTION.—The
20 term ‘automatic contribution’ means contribu-
21 tions which, under the terms of the plan—

22 “(i) the employee can elect to be made
23 as contributions under the plan on behalf
24 of the employee, or to the employee di-
25 rectly in cash, and

1 “(ii) which are made on behalf of the
2 employee under the plan pursuant to a
3 plan provision treating the employee as
4 having elected to have the employer make
5 such contributions on behalf of the em-
6 ployee until the employee affirmatively
7 elects not to have such contribution made
8 or affirmatively elects to make contribu-
9 tions as a specified level.

10 “(3) APPLICABLE EMPLOYER PLAN.—For pur-
11 poses of this subsection, the term ‘applicable em-
12 ployer plan’ means—

13 “(A) an employees’ trust described in sec-
14 tion 401(a) which is exempt from tax under
15 section 501(a),

16 “(B) a plan under which amounts are con-
17 tributed by an individual’s employer for an an-
18 nuity contract described in section 403(b), and

19 “(C) an eligible deferred compensation
20 plan described in section 457(b) which is main-
21 tained by an eligible employer described in sec-
22 tion 457(e)(1)(A).

23 “(4) APPLICABLE PERIOD.—For purposes of
24 this subsection, the term ‘applicable period’ means,
25 with respect to any employee, the three month pe-

1 riod that begins on the first date that an automatic
2 contribution described in paragraph (2)(B) is made
3 with respect to such employee.

4 “(5) SPECIAL RULES.—A distribution described
5 in paragraph (1) (subject to the limitation of para-
6 graph (2))—

7 “(A) shall not be treated as a distribution
8 for purposes of sections 401(k)(2)(B)(i),
9 403(b)(7), 403(b)(11), and 457(d)(1)(A), and

10 “(B) shall not be taken into account for
11 purposes of section 401(k)(3).”.

12 (2) VESTING CONFORMING AMENDMENTS.—

13 (A) Section 411(a)(3)(G) of such Code is
14 amended by inserting “an erroneous automatic
15 contribution under section 414(w),” after
16 “402(g)(2)(A),”.

17 (B) The heading of section 411(a)(3)(G) of
18 such Code is amended by inserting “OR ERRO-
19 NEOUS AUTOMATIC CONTRIBUTION” before the
20 period.

21 (C) Section 401(k)(8)(E) of such Code is
22 amended by inserting “an erroneous automatic
23 contribution under section 414(w),” after
24 “402(g)(2)(A),”.

1 (D) The heading of section 401(k)(8)(E)
2 of such Code is amended by inserting “OR ER-
3 RONEOUS AUTOMATIC CONTRIBUTION” before
4 the period.

5 (E) Section 203(a)(3)(F) of the Employee
6 Retirement Income Security Act of 1974 (29
7 U.S.C. 1053(a)(3)(F)) is amended by inserting
8 “an erroneous automatic contribution under
9 section 414(w) of such Code,” after
10 “402(g)(2)(A) of such Code.”.

11 (e) CONTROL OVER PLAN ASSETS DEEMED TO HAVE
12 BEEN EXERCISED WITH RESPECT TO DEFAULT INVEST-
13 MENT ARRANGEMENTS.—Section 404(c) of the Employee
14 Retirement Income Security Act of 1974, as amended by
15 section 308, is further amended by adding at the end the
16 following new paragraph:

17 “(5)(A) For purposes of paragraph (1), a participant
18 in an individual account plan shall be treated as exercising
19 control over the assets in the account with respect to the
20 amount of contributions made under a default investment
21 arrangement.

22 “(B)(i) For purposes of this paragraph, the term ‘de-
23 fault investment arrangement’ means an arrangement—

24 “(I) which meets the requirements of subpara-
25 graph (C),

1 “(II) under which the participant is treated as
2 having elected to have the plan sponsor exercise con-
3 trol over the assets in the participant’s account until
4 the participant specifically elects to exercise such
5 control, and

6 “(III) under which assets described in sub-
7 clause (II) are invested in accordance with regula-
8 tions prescribed by the Secretary.

9 “(ii) The regulations prescribed pursuant to clause
10 (i)(III) shall provide guidance on the appropriateness of
11 certain investments for designation as default investments
12 under the arrangement, which shall include guidance
13 regarding—

14 “(I) appropriate mixes of default investments
15 and asset classes which the Secretary considers con-
16 sistent with long-term capital appreciation, and

17 “(II) the designation of other default invest-
18 ments.

19 “(C)(i) For purposes of subparagraph (B)(i)(I), an
20 arrangement meets the requirements of this subparagraph
21 for any plan year if, within a reasonable period before such
22 plan year, the plan administrator gives to each participant
23 to whom the arrangement applies for such plan year notice
24 of the participant’s rights and obligations under the ar-
25 rangement which—

1 “(I) is sufficiently accurate and comprehensive
2 to apprise the participant of such rights and obliga-
3 tions, and

4 “(II) is written in a manner calculated to be
5 understood by the average participant to whom the
6 arrangement applies.

7 “(ii) A notice shall not be treated as meeting the re-
8 quirements of clause (i) with respect to a participant
9 unless—

10 “(I) the notice includes an explanation of the
11 participant’s right under the arrangement to specifi-
12 cally elect to exercise control over the assets in the
13 participant’s account,

14 “(II) the employee has a reasonable period of
15 time, after receipt of the notice described in sub-
16 clause (I) and before the assets are first invested, to
17 specifically make such an election, and

18 “(III) the notice explains how contributions
19 made under the arrangement will be invested in the
20 absence of any investment election specifically made
21 by the employee.”.

22 (f) PREEMPTION OF CONFLICTING STATE REGULA-
23 TION.—Section 514 of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. 1144) is amended by
25 adding at the end the following new subsection:

1 “(e)(1) Notwithstanding any other provision of this
2 section, this title shall supersede any law of a State which
3 would directly or indirectly prohibit or restrict the inclu-
4 sion in any plan of an automatic contribution arrange-
5 ment. The Secretary may prescribe regulations which
6 would establish minimum standards that such an arrange-
7 ment would be required to satisfy in order for this sub-
8 section to apply in the case of such arrangement.

9 “(2)(A) For purposes of this subsection, the term
10 ‘automatic contribution arrangement’ means an
11 arrangement—

12 “(i) which meets the requirements of paragraph
13 (3),

14 “(ii) under which a participant may elect to
15 have the plan sponsor make payments as contribu-
16 tions under the plan on behalf of the participant, or
17 to the participant directly in cash,

18 “(iii) under which a participant is treated as
19 having elected to have the plan sponsor make such
20 contributions in an amount equal to a uniform per-
21 centage of compensation provided under the plan
22 until the participant specifically elects not to have
23 such contributions made (or specifically elects to
24 have such contributions made at a different percent-
25 age), and

1 “(iv) under which such contributions are in-
2 vested in accordance with regulations prescribed by
3 the Secretary.

4 “(B) The regulations prescribed pursuant to subpara-
5 graph (A)(iv) shall provide guidance on the appropriate-
6 ness of certain investments for designation as default in-
7 vestments under the arrangement, which shall include
8 guidance regarding appropriate mixes of default invest-
9 ments and asset classes which the Secretary considers con-
10 sistent with long-term capital appreciation

11 “(3)(A) For purposes of paragraph (2)(A)(i), an ar-
12 rangement meets the requirements of this paragraph for
13 any plan year if, within a reasonable period before such
14 plan year, the plan administrator gives to each participant
15 to whom the arrangement applies for such plan year notice
16 of the participant’s rights and obligations under the ar-
17 rangement 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 (g) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to plan years beginning after De-
19 cember 31, 2005.

20 **SEC. 904. PENALTY-FREE WITHDRAWALS FROM RETIRE-**
21 **MENT PLANS FOR INDIVIDUALS CALLED TO**
22 **ACTIVE DUTY FOR AT LEAST 179 DAYS.**

23 (a) IN GENERAL.—Paragraph (2) of section 72(t) of
24 the Internal Revenue Code of 1986 (relating to 10-percent
25 additional tax on early distributions from qualified retire-

1 ment plans) is amended by adding at the end the following
2 new subparagraph:

3 “(G) DISTRIBUTIONS FROM RETIREMENT
4 PLANS TO INDIVIDUALS CALLED TO ACTIVE
5 DUTY.—

6 “(i) IN GENERAL.—Any qualified re-
7 servist distribution.

8 “(ii) AMOUNT DISTRIBUTED MAY BE
9 REPAID.—Any individual who receives a
10 qualified reservist distribution may, at any
11 time during the 2-year period beginning on
12 the day after the end of the active duty pe-
13 riod, make one or more contributions to an
14 individual retirement plan of such indi-
15 vidual in an aggregate amount not to ex-
16 ceed the amount of such distribution. The
17 dollar limitations otherwise applicable to
18 contributions to individual retirement plans
19 shall not apply to any contribution made
20 pursuant to the preceding sentence. No de-
21 duction shall be allowed for any contribu-
22 tion pursuant to this clause.

23 “(iii) QUALIFIED RESERVIST DIS-
24 TRIBUTION.—For purposes of this sub-
25 paragraph, the term ‘qualified reservist

1 distribution' means any distribution to an
2 individual if—

3 “(I) such distribution is from an
4 individual retirement plan, or from
5 amounts attributable to employer con-
6 tributions made pursuant to elective
7 deferrals described in subparagraph
8 (A) or (C) of section 402(g)(3) or sec-
9 tion 501(c)(18)(D)(iii),

10 “(II) such individual was (by rea-
11 son of being a member of a reserve
12 component (as defined in section 101
13 of title 37, United States Code)), or-
14 dered or called to active duty for a pe-
15 riod in excess of 179 days or for an
16 indefinite period, and

17 “(III) such distribution is made
18 during the period beginning on the
19 date of such order or call and ending
20 at the close of the active duty period.

21 “(iv) APPLICATION OF SUBPARA-
22 GRAPH.—This subparagraph applies to in-
23 dividuals ordered or called to active duty
24 after September 11, 2001, and before Sep-
25 tember 12, 2007. In no event shall the 2-

1 year period referred to in clause (ii) end
2 before the date which is 2-years after the
3 date of the enactment of this subpara-
4 graph.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 401(k)(2)(B)(i) of such Code is
7 amended by striking “or” at the end of subclause
8 (III), by striking “and” at the end of subclause (IV)
9 and inserting “or”, and by inserting after subclause
10 (IV) the following new subclause:

11 “(V) in the case of a qualified re-
12 servist distribution (as defined in sec-
13 tion 72(t)(2)(G)(iii)), the date on
14 which a period referred to in sub-
15 clause (III) of such section begins,
16 and”.

17 (2) Section 403(b)(7)(A)(ii) of such Code is
18 amended by inserting “(unless such amount is a dis-
19 tribution to which section 72(t)(2)(G) applies)” after
20 “distributee”.

21 (3) Section 403(b)(11) of such Code is amend-
22 ed by striking “or” at the end of subparagraph (A),
23 by striking the period at the end of subparagraph
24 (B) and inserting “, or”, and by inserting after sub-
25 paragraph (B) the following new subparagraph:

1 “(C) for distributions to which section
2 72(t)(2)(G) applies.”.

3 (c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

4 (1) EFFECTIVE DATE.—The amendment made
5 by this section shall apply to distributions after Sep-
6 tember 11, 2001.

7 (2) WAIVER OF LIMITATIONS.—If refund or
8 credit of any overpayment of tax resulting from the
9 amendments made by this section is prevented at
10 any time before the close of the 1-year period begin-
11 ning on the date of the enactment of this Act by the
12 operation of any law or rule of law (including res ju-
13 dicata), such refund or credit may nevertheless be
14 made or allowed if claim therefor is filed before the
15 close of such period.

16 **SEC. 905. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**
17 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**
18 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**
19 **PLOYEES.**

20 (a) IN GENERAL.—Section 72(t)(2) of the Internal
21 Revenue Code of 1986 (relating to subsection not to apply
22 to certain distributions), as amended by section 904, is
23 amended by adding at the end the following new sub-
24 section:

1 “(H) DROP DISTRIBUTIONS TO QUALI-
2 FIED PUBLIC SAFETY EMPLOYEES IN GOVERN-
3 MENTAL PLANS.—

4 “(i) IN GENERAL.—Distributions to
5 an individual who is a qualified public safe-
6 ty employee from a governmental plan
7 within the meaning of section 414(d) to
8 the extent such distributions are attrib-
9 utable to a DROP benefit.

10 “(ii) DEFINITIONS.—For purposes of
11 this subparagraph—

12 “(I) DROP BENEFIT.—The term
13 ‘DROP benefit’ means a feature of a
14 governmental plan which is a defined
15 benefit plan and under which an em-
16 ployee elects to receive credits to an
17 account (including a notional account)
18 in the plan which are not in excess of
19 the plan benefits (payable in the form
20 of an annuity) that would have been
21 provided if the employee had retired
22 under the plan at a specified earlier
23 retirement date and which are in lieu
24 of increases in the employee’s accrued
25 pension benefit based on years of

1 service after the effective date of the
2 DROP election.

3 “(II) QUALIFIED PUBLIC SAFETY
4 EMPLOYEE.—The term ‘qualified pub-
5 lic safety employee’ means any em-
6 ployee of any police department or fire
7 department organized and operated by
8 a State or political subdivision of a
9 State if the employee provides police
10 protection, firefighting services, or
11 emergency medical services for any
12 area within the jurisdiction of such
13 State or political subdivision and if
14 the employee was eligible to retire on
15 or before the date of such election and
16 receive immediate retirement bene-
17 fits.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to distributions after the date of
20 the enactment of this Act.

1 **SEC. 906. COMBAT ZONE COMPENSATION TAKEN INTO AC-**
2 **COUNT FOR PURPOSES OF DETERMINING**
3 **LIMITATION AND DEDUCTIBILITY OF CON-**
4 **TRIBUTIONS TO INDIVIDUAL RETIREMENT**
5 **PLANS.**

6 (a) IN GENERAL.—Subsection (f) of section 219 of
7 the Internal Revenue Code of 1986 is amended by redesignig-
8 nating paragraph (7) as paragraph (8) and by inserting
9 after paragraph (6) the following new paragraph:

10 “(7) SPECIAL RULE FOR COMPENSATION
11 EARNED BY MEMBERS OF THE ARMED FORCES FOR
12 SERVICE IN A COMBAT ZONE.—For purposes of sub-
13 sections (b)(1)(B) and (c), the amount of compensa-
14 tion includible in an individual’s gross income shall
15 be determined without regard to section 112.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2005.

19 **SEC. 907. DIRECT PAYMENT OF TAX REFUNDS TO INDI-**
20 **VIDUAL RETIREMENT PLANS.**

21 (a) IN GENERAL.—The Secretary of the Treasury (or
22 the Secretary’s delegate) shall make available a form (or
23 modify existing forms) for use by individuals to direct that
24 a portion of any refund of overpayment of tax imposed
25 by chapter 1 of the Internal Revenue Code of 1986 be

1 paid directly to an individual retirement plan (as defined
2 in section 7701(a)(37) of such Code) of such individual.

3 (b) EFFECTIVE DATE.—The form required by sub-
4 section (a) shall be made available for taxable years begin-
5 ning after December 31, 2006.

6 **SEC. 908. IRA ELIGIBILITY FOR THE DISABLED.**

7 (a) IN GENERAL.—Subsection (f) of section 219 of
8 the Internal Revenue Code of 1986 (relating to other defi-
9 nitions and special rules), as amended by this Act, is fur-
10 ther amended by redesignating paragraph (8) as para-
11 graph (9) and by inserting after paragraph (7) the fol-
12 lowing new paragraph:

13 “(8) SPECIAL RULE FOR CERTAIN DISABLED
14 INDIVIDUALS.—In the case of an individual—

15 “(A) who is disabled (within the meaning
16 of section 72(m)(7)), and

17 “(B) who has not attained the applicable
18 age (as defined in section 401(a)(9)(H)) before
19 the close of the taxable year,

20 subparagraph (B) of subsection (b)(1) shall not
21 apply.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years beginning after
24 December 31, 2005.

1 **SEC. 909. ALLOW ROLLOVERS BY NONSPOUSE BENE-**
2 **FICIARIES OF CERTAIN RETIREMENT PLAN**
3 **DISTRIBUTIONS.**

4 (a) IN GENERAL.—

5 (1) QUALIFIED PLANS.—Section 402(c) of the
6 Internal Revenue Code of 1986 (relating to rollovers
7 from exempt trusts) is amended by adding at the
8 end the following new paragraph:

9 “(11) DISTRIBUTIONS TO INHERITED INDI-
10 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-
11 FICIARY.—

12 “(A) IN GENERAL.—If, with respect to any
13 portion of a distribution from an eligible retire-
14 ment plan of a deceased employee, a direct
15 trustee-to-trustee transfer is made to an indi-
16 vidual retirement plan described in clause (i) or
17 (ii) of paragraph (8)(B) established for the pur-
18 poses of receiving the distribution on behalf of
19 an individual who is a designated beneficiary
20 (as defined by section 401(a)(9)(E)) of the em-
21 ployee and who is not the surviving spouse of
22 the employee—

23 “(i) the transfer shall be treated as an
24 eligible rollover distribution for purposes of
25 this subsection,

1 “(ii) the individual retirement plan
2 shall be treated as an inherited individual
3 retirement account or individual retirement
4 annuity (within the meaning of section
5 408(d)(3)(C)) for purposes of this title,
6 and

7 “(iii) section 401(a)(9)(B) (other than
8 clause (iv) thereof) shall apply to such
9 plan.

10 “(B) CERTAIN TRUSTS TREATED AS BENE-
11 FICIARIES.—For purposes of this paragraph, to
12 the extent provided in rules prescribed by the
13 Secretary, a trust maintained for the benefit of
14 one or more designated beneficiaries shall be
15 treated in the same manner as a trust des-
16 ignated beneficiary.”.

17 (2) SECTION 403(a) PLANS.—Subparagraph
18 (B) of section 403(a)(4) of such Code (relating to
19 rollover amounts) is amended by inserting “and
20 (11)” after “(7)”.

21 (3) SECTION 403(b) PLANS.—Subparagraph
22 (B) of section 403(b)(8) of such Code (relating to
23 rollover amounts) is amended by striking “and (9)”
24 and inserting “, (9), and (11)”.

1 (4) SECTION 457 PLANS.—Subparagraph (B) of
2 section 457(e)(16) of such Code (relating to rollover
3 amounts) is amended by striking “and (9)” and in-
4 serting “, (9), and (11)”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to distributions after December 31,
7 2005.

8 **TITLE X—PROVISIONS TO EN-**
9 **HANCE HEALTH CARE AF-**
10 **FORDABILITY**

11 **SEC. 1001. TREATMENT OF ANNUITY AND LIFE INSURANCE**
12 **CONTRACTS WITH A LONG-TERM CARE IN-**
13 **SURANCE FEATURE.**

14 (a) EXCLUSION FROM GROSS INCOME.—Subsection
15 (e) of section 72 of the Internal Revenue Code of 1986
16 (relating to amounts not received as annuities) is amended
17 by redesignating paragraph (11) as paragraph (12) and
18 by inserting after paragraph (10) the following new para-
19 graph:

20 “(11) SPECIAL RULES FOR CERTAIN COMBINA-
21 TION CONTRACTS PROVIDING LONG-TERM CARE IN-
22 SURANCE.—Notwithstanding paragraphs (2), (5)(C),
23 and (10), in the case of any charge against the cash
24 value of an annuity contract or the cash surrender
25 value of a life insurance contract made as payment

1 for coverage under a qualified long-term care insur-
2 ance contract which is part of or a rider on such an-
3 nuity or life insurance contract—

4 “(A) the investment in the contract shall
5 be reduced (but not below zero) by such charge,
6 and

7 “(B) such charge shall not be includible in
8 gross income.”.

9 (b) TAX-FREE EXCHANGES AMONG CERTAIN INSUR-
10 ANCE POLICIES.—

11 (1) ANNUITY CONTRACTS CAN INCLUDE QUALI-
12 FIED LONG-TERM CARE INSURANCE RIDERS.—Para-
13 graph (2) of section 1035(b) of such Code is amend-
14 ed by adding at the end the following new sentence:
15 “For purposes of the preceding sentence, a contract
16 shall not fail to be treated as an annuity contract
17 solely because a qualified long-term care insurance
18 contract is a part of or a rider on such contract.”.

19 (2) LIFE INSURANCE CONTRACTS CAN INCLUDE
20 QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—
21 Paragraph (3) of section 1035(b) of such Code is
22 amended by adding at the end the following new
23 sentence: “For purposes of the preceding sentence,
24 a contract shall not fail to be treated as a life insur-
25 ance contract solely because a qualified long-term

1 care insurance contract is a part of or a rider on
2 such contract.”.

3 (3) EXPANSION OF TAX-FREE EXCHANGES OF
4 LIFE INSURANCE, ENDOWMENT, AND ANNUITY CON-
5 TRACTS FOR LONG-TERM CARE CONTRACTS.—Sub-
6 section (a) of section 1035 of such Code (relating to
7 certain exchanges of insurance policies) is
8 amended—

9 (A) in paragraph (1) by striking “con-
10 tract;” and inserting “contract or for a quali-
11 fied long-term care insurance contract;”,

12 (B) in paragraph (2) by striking “con-
13 tract;” and inserting “contract, or (C) for a
14 qualified long-term care insurance contract;”,
15 and

16 (C) in paragraph (3) by striking “con-
17 tract.” and inserting “contract or for a quali-
18 fied long-term care insurance contract.”.

19 (4) TAX-FREE EXCHANGES OF QUALIFIED
20 LONG-TERM CARE INSURANCE CONTRACT.—Sub-
21 section (a) of section 1035 of such Code (relating to
22 certain exchanges of insurance policies) is amended
23 by striking “or” at the end of paragraph (2), by
24 striking the period at the end of paragraph (3) and

1 inserting “; or”, and by inserting after paragraph
2 (3) the following new paragraph:

3 “(4) a qualified long-term care insurance con-
4 tract for a qualified long-term care insurance con-
5 tract.”.

6 (c) TREATMENT OF COVERAGE PROVIDED AS PART
7 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Sub-
8 section (e) of section 7702B of such Code (relating to
9 treatment of qualified long-term care insurance) is amend-
10 ed to read as follows:

11 “(e) TREATMENT OF COVERAGE PROVIDED AS PART
12 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

13 “(1) COVERAGE TREATED AS CONTRACT.—Ex-
14 cept as otherwise provided in regulations prescribed
15 by the Secretary, in the case of any long-term care
16 insurance coverage (whether or not qualified) pro-
17 vided by a rider on or as part of a life insurance
18 contract or an annuity contract, this title shall apply
19 as if the portion of the contract providing such cov-
20 erage is a separate contract.

21 “(2) DENIAL OF DEDUCTION UNDER SECTION
22 213.—No deduction shall be allowed under section
23 213(a) for any payment made for coverage under a
24 qualified long-term care insurance contract if such
25 payment is made as a charge against the cash value

1 of an annuity contract or the cash surrender value
2 of a life insurance contract.

3 “(3) APPLICATION OF SECTION 7702.—Section
4 7702(e)(2) (relating to the guideline premium limi-
5 tation) shall be applied by increasing the guideline
6 premium limitation with respect to the life insurance
7 contract, as of any date—

8 “(A) by the sum of any charges (but not
9 premium payments) against the life insurance
10 contract’s cash surrender value (within the
11 meaning of section 7702(f)(2)(A)) for coverage
12 under the qualified long-term care insurance
13 contract made to that date under the life insur-
14 ance contract, less

15 “(B) any such charges the imposition of
16 which reduces the premiums paid for the life in-
17 surance contract (within the meaning of section
18 7702(f)(1)).

19 “(4) PORTION DEFINED.—For purposes of this
20 subsection, the term ‘portion’ means only the terms
21 and benefits under a life insurance contract or annu-
22 ity contract that are in addition to the terms and
23 benefits under the contract without regard to long-
24 term care insurance coverage.

1 “(5) ANNUITY CONTRACTS TO WHICH PARA-
2 GRAPH (1) DOES NOT APPLY.—For purposes of this
3 subsection, none of the following shall be treated as
4 an annuity contract:

5 “(A) A trust described in section 401(a)
6 which is exempt from tax under section 501(a).

7 “(B) A contract—

8 “(i) purchased by a trust described in
9 subparagraph (A),

10 “(ii) purchased as part of a plan de-
11 scribed in section 403(a),

12 “(iii) described in section 403(b),

13 “(iv) provided for employees of a life
14 insurance company under a plan described
15 in section 818(a)(3), or

16 “(v) from an individual retirement ac-
17 count or an individual retirement annuity.

18 “(C) A contract purchased by an employer
19 for the benefit of the employee (or the employ-
20 ee’s spouse).

21 Any dividend described in section 404(k) which is
22 received by a participant or beneficiary shall, for
23 purposes of this paragraph, be treated as paid under
24 a separate contract to which subparagraph (B)(i)
25 applies.”.

1 (d) INFORMATION REPORTING.—

2 (1) Subpart B of part III of subchapter A of
3 chapter 61 of such Code (relating to information
4 concerning transactions with other persons) is
5 amended by adding at the end the following new sec-
6 tion:

7 **“SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED**
8 **LONG-TERM CARE INSURANCE CONTRACTS**
9 **UNDER COMBINED ARRANGEMENTS.**

10 “(a) REQUIREMENT OF REPORTING.—Any person
11 who makes a charge against the cash value of an annuity
12 contract, or the cash surrender value of a life insurance
13 contract, which is excludible from gross income under sec-
14 tion 72(e)(11) shall make a return, according to the forms
15 or regulations prescribed by the Secretary, setting forth—

16 “(1) the amount of the aggregate of such
17 charges against each such contract for the calendar
18 year,

19 “(2) the amount of the reduction in the invest-
20 ment in each such contract by reason of such
21 charges, and

22 “(3) the name, address, and TIN of the indi-
23 vidual who is the holder of each such contract.

24 “(b) STATEMENTS TO BE FURNISHED TO PERSONS
25 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

1 Every person required to make a return under subsection
2 (a) shall furnish to each individual whose name is required
3 to be set forth in such return a written statement
4 showing—

5 “(1) the name, address, and phone number of
6 the information contact of the person making the
7 payments, and

8 “(2) the information required to be shown on
9 the return with respect to such individual.

10 The written statement required under the preceding sen-
11 tence shall be furnished to the individual on or before Jan-
12 uary 31 of the year following the calendar year for which
13 the return under subsection (a) was required to be made.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions for subpart B of part III of subchapter A of
16 such chapter 61 of such Code is amended by adding
17 at the end the following new item:

 “Sec. 6050U. Charges or payments for qualified long-term care insurance con-
 tracts under combined arrangements.”.

18 (e) TREATMENT OF POLICY ACQUISITION EX-
19 PENSES.—Subsection (e) of section 848 of such Code (re-
20 lating to classification of contracts) is amended by adding
21 at the end the following new paragraph:

22 “(6) TREATMENT OF CERTAIN QUALIFIED
23 LONG-TERM CARE INSURANCE CONTRACT ARRANGE-
24 MENTS.—An annuity or life insurance contract

1 which includes a qualified long-term care insurance
2 contract as a part of or a rider on such annuity or
3 life insurance contract shall be treated as a specified
4 insurance contract not described in subparagraph
5 (A) or (B) of subsection (c)(1).”.

6 (f) TREATMENT AS QUALIFIED ADDITIONAL BEN-
7 EFIT.—Subparagraph (A) of section 7702(f)(5) of such
8 Code (relating to qualified additional benefits) is amended
9 by striking “or” at the end of clause (iv), by redesignating
10 clause (v) as clause (vi), and by inserting after clause (iv)
11 the following new clause:

12 “(v) qualified long-term care insur-
13 ance contract which is a part of or a rider
14 on the contract, or”.

15 (g) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided by para-
17 graph (2), the amendments made by this section
18 shall apply to contracts issued before, on, or after
19 December 31, 2006, but only with respect to periods
20 beginning after such date.

21 (2) SUBSECTION (b).—The amendments made
22 by subsection (b) shall apply with respect to ex-
23 changes occurring after December 31, 2006.

1 **SEC. 1002. DISPOSITION OF UNUSED HEALTH AND DEPEND-**
2 **ENT CARE BENEFITS IN CAFETERIA PLANS**
3 **AND FLEXIBLE SPENDING ARRANGEMENTS.**

4 (a) IN GENERAL.—Section 125 of the Internal Rev-
5 enue Code of 1986 (relating to cafeteria plans) is amended
6 by redesignating subsections (h) and (i) as subsections (i)
7 and (j), respectively, and by inserting after subsection (g)
8 the following:

9 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH
10 AND DEPENDENT CARE BENEFITS.—

11 “(1) IN GENERAL.—For purposes of this title,
12 a plan or other arrangement shall not fail to be
13 treated as a cafeteria plan solely because under such
14 plan qualified benefits include—

15 “(A) a health flexible spending arrange-
16 ment under which not more than \$500 of un-
17 used benefits under such arrangement may
18 be—

19 “(i) carried forward to the succeeding
20 plan year of such health flexible spending
21 arrangement, or

22 “(ii) to the extent permitted by sec-
23 tion 106(d), contributed by the employer to
24 a health savings account (as defined in sec-
25 tion 223(d)) maintained for the benefit of
26 the employee, and

1 “(B) a dependent care flexible spending ar-
2 rangement under which not more than \$500 of
3 unused benefits under such arrangement may
4 be carried forward to the succeeding plan year
5 of such dependent care flexible spending ar-
6 rangement.

7 “(2) HEALTH FLEXIBLE SPENDING ARRANGE-
8 MENT.—For purposes of this subsection, the term
9 ‘health flexible spending arrangement’ means a flexi-
10 ble spending arrangement (as defined in section
11 106(c)) that is a qualified benefit and only permits
12 reimbursement for expenses for medical care (as de-
13 fined in section 213(d)(1), without regard to sub-
14 paragraphs (C) and (D) thereof).

15 “(3) DEPENDENT CARE FLEXIBLE SPENDING
16 ARRANGEMENT.—For purposes of this subsection,
17 the term ‘dependent care flexible spending arrange-
18 ment’ means a flexible spending arrangement (as de-
19 fined in section 106(c)) that is a qualified benefit
20 and only permits reimbursement for expenses for de-
21 pendent care assistance which meets the require-
22 ments of section 129(d).

23 “(4) UNUSED BENEFITS.—For purposes of this
24 subsection, with respect to an employee, the term
25 ‘unused benefits’ means the excess of—

1 not include any distribution from an eligible retire-
2 ment plan to the extent that the aggregate amount
3 of such distributions does not exceed the amount
4 paid by such employee for qualified health insurance
5 premiums of the employee, his spouse, or dependents
6 (as defined in section 152) for such taxable year.

7 “(2) LIMITATION.—The amount which may be
8 excluded from gross income for the taxable year by
9 reason of paragraph (1) shall not exceed \$5,000.

10 “(3) DISTRIBUTIONS MUST OTHERWISE BE IN-
11 CLUDIBLE.—

12 “(A) IN GENERAL.—An amount shall be
13 treated as a distribution for purposes of para-
14 graph (1) only to the extent that such amount
15 would be includible in gross income without re-
16 gard to paragraph (1).

17 “(B) APPLICATION OF SECTION 72.—Not-
18 withstanding section 72, in determining the ex-
19 tent to which an amount is treated as a dis-
20 tribution for purposes of subparagraph (A), the
21 aggregate amounts distributed from an eligible
22 retirement plan in a taxable year (up to the
23 amount excluded under paragraph (1)) shall be
24 treated as includible in gross income (without
25 regard to subparagraph (A)) to the extent that

1 such amount does not exceed the aggregate
2 amount which would have been so includible if
3 all amounts distributed from all eligible retire-
4 ment plans were treated as 1 contract for pur-
5 poses of determining the inclusion of such dis-
6 tribution under section 72. Proper adjustments
7 shall be made in applying section 72 to other
8 distributions in such taxable year and subse-
9 quent taxable years.

10 “(4) DEFINITIONS.—For purposes of this
11 subsection—

12 “(A) ELIGIBLE RETIREMENT PLAN.—For
13 purposes of paragraph (1), the term ‘eligible re-
14 tirement plan’ means a governmental plan
15 (within the meaning of section 414(d)) which is
16 described in clause (iii), (iv), (v), or (vi) of sub-
17 section (c)(8)(B).

18 “(B) ELIGIBLE RETIRED PUBLIC SAFETY
19 OFFICER.—The term ‘eligible retired public
20 safety officer’ means an individual who, by rea-
21 son of disability or attainment of normal retire-
22 ment age, is separated from service as a public
23 safety officer with the employer who maintains
24 the eligible retirement plan from which distribu-
25 tions subject to paragraph (1) are made.

1 “(C) PUBLIC SAFETY OFFICER.—The term
2 ‘public safety officer’ shall have the same mean-
3 ing given such term by section 1204(8)(A) of
4 the Omnibus Crime Control and Safe Streets
5 Act of 1968 (42 U.S.C. 3796b(8)(A)).

6 “(D) QUALIFIED HEALTH INSURANCE
7 PREMIUMS.—The term ‘qualified health insur-
8 ance premiums’ means premiums for coverage
9 for the eligible retired public safety officer, his
10 spouse, and dependents, by an accident or
11 health insurance plan or qualified long-term
12 care insurance contract (as defined in section
13 7702B(b)).

14 “(5) SPECIAL RULES.—For purposes of this
15 subsection—

16 “(A) DIRECT PAYMENT TO INSURER RE-
17 QUIRED.—Paragraph (1) shall only apply to a
18 distribution if payment of the premiums is
19 made directly to the provider of the accident or
20 health insurance plan or qualified long-term
21 care insurance contract by deduction from a
22 distribution from the eligible retirement plan.

23 “(B) RELATED PLANS TREATED AS 1.—All
24 eligible retirement plans of an employer shall be
25 treated as a single plan.

1 “(6) ELECTION DESCRIBED.—

2 “(A) IN GENERAL.—For purposes of para-
3 graph (1), an election is described in this para-
4 graph if the election is made by an employee
5 after separation from service with respect to
6 amounts not distributed from an eligible retire-
7 ment plan to have amounts from such plan dis-
8 tributed in order to pay for qualified health in-
9 surance premiums.

10 “(B) SPECIAL RULE.—A plan shall not be
11 treated as violating the requirements of section
12 401, or as engaging in a prohibited transaction
13 for purposes of section 503(b), merely because
14 it provides for an election with respect to
15 amounts that are otherwise distributable under
16 the plan or merely because of a distribution
17 made pursuant to an election described in sub-
18 paragraph (A).

19 “(7) COORDINATION WITH MEDICAL EXPENSE
20 DEDUCTION.—The amounts excluded from gross in-
21 come under paragraph (1) shall not be taken into
22 account under section 213.

23 “(8) COORDINATION WITH DEDUCTION FOR
24 HEALTH INSURANCE COSTS OF SELF-EMPLOYED IN-
25 DIVIDUALS.—The amounts excluded from gross in-

1 come under paragraph (1) shall not be taken into
2 account under section 162(l).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 403(a) of such Code (relating to
5 taxability of beneficiary under a qualified annuity
6 plan) is amended by inserting after paragraph (1)
7 the following new paragraph:

8 “(2) SPECIAL RULE FOR HEALTH AND LONG-
9 TERM CARE INSURANCE.—To the extent provided in
10 section 402(l), paragraph (1) shall not apply to the
11 amount distributed under the contract which is oth-
12 erwise includible in gross income under this sub-
13 section.”.

14 (2) Section 403(b) of such Code (relating to
15 taxability of beneficiary under annuity purchased by
16 section 501(c)(3) organization or public school) is
17 amended by inserting after paragraph (1) the fol-
18 lowing new paragraph:

19 “(2) SPECIAL RULE FOR HEALTH AND LONG-
20 TERM CARE INSURANCE.—To the extent provided in
21 section 402(l), paragraph (1) shall not apply to the
22 amount distributed under the contract which is oth-
23 erwise includible in gross income under this sub-
24 section.”.

1 (3) Section 457(a) of such Code (relating to
2 year of inclusion in gross income) is amended by
3 adding at the end the following new paragraph:

4 “(3) SPECIAL RULE FOR HEALTH AND LONG-
5 TERM CARE INSURANCE.—In the case of a plan of
6 an eligible employer described in subsection
7 (e)(1)(A), to the extent provided in section 402(l),
8 paragraph (1) shall not apply to amounts otherwise
9 includible in gross income under this subsection.”.

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

13 **TITLE XI—GENERAL** 14 **PROVISIONS**

15 **SEC. 1101. PROVISIONS RELATING TO PLAN AMENDMENTS.**

16 (a) IN GENERAL.—If this section applies to any pen-
17 sion plan or contract amendment—

18 (1) such pension plan or contract shall be treat-
19 ed as being operated in accordance with the terms
20 of the plan during the period described in subsection
21 (b)(2)(A), and

22 (2) except as provided by the Secretary of the
23 Treasury, such pension plan shall not fail to meet
24 the requirements of section 411(d)(6) of the Internal
25 Revenue Code of 1986 and section 204(g) of the

1 Employee Retirement Income Security Act of 1974
2 by reason of such amendment.

3 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

4 (1) IN GENERAL.—This section shall apply to
5 any amendment to any pension plan or annuity con-
6 tract which is made—

7 (A) pursuant to any amendment made by
8 this Act or pursuant to any regulation issued by
9 the Secretary of the Treasury or the Secretary
10 of Labor under this Act, and

11 (B) on or before the last day of the first
12 plan year beginning on or after January 1,
13 2008.

14 In the case of a governmental plan (as defined in
15 section 414(d) of the Internal Revenue Code of
16 1986), this paragraph shall be applied by sub-
17 stituting “2010” for “2008”.

18 (2) CONDITIONS.—This section shall not apply
19 to any amendment unless—

20 (A) during the period—

21 (i) beginning on the date the legisla-
22 tive or regulatory amendment described in
23 paragraph (1)(A) takes effect (or in the
24 case of a plan or contract amendment not
25 required by such legislative or regulatory

1 amendment, the effective date specified by
2 the plan), and

3 (ii) ending on the date described in
4 paragraph (1)(B) (or, if earlier, the date
5 the plan or contract amendment is adopt-
6 ed),

7 the plan or contract is operated as if such plan
8 or contract amendment were in effect; and

9 (B) such plan or contract amendment ap-
10 plies retroactively for such period.