

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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**H. R. 2830**

**AN ACT**

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.



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To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

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

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**

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:

1 “MINIMUM FUNDING STANDARDS

2 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM  
3 FUNDING STANDARD.—

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

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

11 “(A) in the case of a defined benefit plan  
12 which is a single-employer plan, the employer  
13 makes contributions to or under the plan for  
14 the plan year which, in the aggregate, are not  
15 less than the minimum required contribution  
16 determined under section 303 for the plan for  
17 the plan year,

18 “(B) in the case of a money purchase plan  
19 which is a single-employer plan, the employer  
20 makes contributions to or under the plan for  
21 the plan year which are required under the  
22 terms of the plan, and

23 “(C) in the case of a multiemployer plan,  
24 the employers make contributions to or under  
25 the plan for any plan year which, in the aggre-

1           gate, are sufficient to ensure that the plan does  
2           not have an accumulated funding deficiency  
3           under section 304 as of the end of the plan  
4           year.

5           “(b) LIABILITY FOR CONTRIBUTIONS.—

6                 “(1) IN GENERAL.—Except as provided in para-  
7           graph (2), the amount of any contribution required  
8           by this section (including any required installments  
9           under paragraphs (3) and (4) of section 303(j))  
10          shall be paid by the employer responsible for making  
11          contributions to or under the plan.

12                 “(2) JOINT AND SEVERAL LIABILITY WHERE  
13          EMPLOYER MEMBER OF CONTROLLED GROUP.—In  
14          the case of a single-employer plan, if the employer  
15          referred to in paragraph (1) is a member of a con-  
16          trolled group, each member of such group shall be  
17          jointly and severally liable for payment of such con-  
18          tributions.

19           “(c) VARIANCE FROM MINIMUM FUNDING STAND-  
20          ARDS.—

21                 “(1) WAIVER IN CASE OF BUSINESS HARD-  
22          SHIP.—

23                         “(A) IN GENERAL.—If—

24                                 “(i) an employer is (or in the case of  
25                                 a multiemployer plan, 10 percent or more



1 of the number of employers contributing to  
2 or under the plan is) unable to satisfy the  
3 minimum funding standard for a plan year  
4 without temporary substantial business  
5 hardship (substantial business hardship in  
6 the case of a multiemployer plan), and

7 “(ii) application of the standard would  
8 be adverse to the interests of plan partici-  
9 pants in the aggregate,

10 the Secretary of the Treasury may, subject to  
11 subparagraph (C), waive the requirements of  
12 subsection (a) for such year with respect to all  
13 or any portion of the minimum funding stand-  
14 ard. The Secretary of the Treasury shall not  
15 waive the minimum funding standard with re-  
16 spect to a plan for more than 3 of any 15 (5  
17 of any 15 in the case of a multiemployer plan)  
18 consecutive plan years.

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

22 “(i) in the case of a single-employer  
23 plan, the minimum required contribution  
24 under section 303 for the plan year shall  
25 be reduced by the amount of the waived

1 funding deficiency and such amount shall  
2 be amortized as required under section  
3 303(e), and

4 “(ii) in the case of a multiemployer  
5 plan, the funding standard account shall  
6 be credited under section 304(b)(3)(C)  
7 with the amount of the waived funding de-  
8 ficiency and such amount shall be amor-  
9 tized as required under section  
10 304(b)(2)(C).

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

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

1           “(A) the employer is operating at an eco-  
2           nomic loss,

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

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

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

11          “(3) WAIVED FUNDING DEFICIENCY.—For pur-  
12          poses of this part, the term ‘waived funding defi-  
13          ciency’ means the portion of the minimum funding  
14          standard under subsection (a) (determined without  
15          regard to the waiver) for a plan year waived by the  
16          Secretary of the Treasury and not satisfied by em-  
17          ployer contributions.

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

20                 “(A) SECURITY MAY BE REQUIRED.—

21                         “(i) IN GENERAL.—Except as pro-  
22                         vided in subparagraph (C), the Secretary  
23                         of the Treasury may require an employer  
24                         maintaining a defined benefit plan which is  
25                         a single-employer plan (within the meaning

1 of section 4001(a)(15)) to provide security  
2 to such plan as a condition for granting or  
3 modifying a waiver under paragraph (1).

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

13 “(B) CONSULTATION WITH THE PENSION  
14 BENEFIT GUARANTY CORPORATION.—Except as  
15 provided in subparagraph (C), the Secretary of  
16 the Treasury shall, before granting or modi-  
17 fying a waiver under this subsection with re-  
18 spect to a plan described in subparagraph  
19 (A)(i)—

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

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

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

4 “(ii) consider—

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

7 “(II) any views of any employee  
8 organization (within the meaning of  
9 section 3(4)) representing participants  
10 in the plan which are submitted in  
11 writing to the Secretary of the Treas-  
12 ury in connection with such applica-  
13 tion.

14 Information provided to the Corporation under  
15 this subparagraph shall be considered tax re-  
16 turn information and subject to the safe-  
17 guarding and reporting requirements of section  
18 6103(p) of the Internal Revenue Code of 1986.

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

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

1           “(I) the aggregate unpaid minimum required contribution for the  
2           plan year and all preceding plan  
3           years, and  
4           years, and

5           “(II) the present value of all  
6           waiver amortization installments determined for the plan year and succeeding  
7           plan years under section  
8           303(e)(2),  
9           303(e)(2),

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

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

19           “(iii) UNPAID MINIMUM REQUIRED  
20           CONTRIBUTION.—For purposes of this sub-  
21           paragraph—

22           “(I) IN GENERAL.—The term  
23           ‘unpaid minimum required contribu-  
24           tion’ means, with respect to any plan  
25           year, any minimum required contribu-

1           tion under section 303 for the plan  
2           year which is not paid on or before  
3           the due date (as determined under  
4           section 303(j)(1)) for the plan year.

5                   “(II) ORDERING RULE.—For  
6           purposes of subclause (I), any pay-  
7           ment to or under a plan for any plan  
8           year shall be allocated first to unpaid  
9           minimum required contributions for  
10          all preceding plan years on a first-in,  
11          first-out basis and then to the min-  
12          imum required contribution under sec-  
13          tion 303 for the plan year.

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

16                   “(A) APPLICATION MUST BE SUBMITTED  
17          BEFORE DATE 2½ MONTHS AFTER CLOSE OF  
18          YEAR.—In the case of a single-employer plan,  
19          no waiver may be granted under this subsection  
20          with respect to any plan for any plan year un-  
21          less an application therefor is submitted to the  
22          Secretary of the Treasury not later than the  
23          15th day of the 3rd month beginning after the  
24          close of such plan year.

1           “(B) SPECIAL RULE IF EMPLOYER IS MEM-  
2           BER OF CONTROLLED GROUP.—In the case of a  
3           single-employer plan, if an employer is a mem-  
4           ber of a controlled group, the temporary sub-  
5           stantial business hardship requirements of  
6           paragraph (1) shall be treated as met only if  
7           such requirements are met—

8                   “(i) with respect to such employer,  
9                   and

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

14           The Secretary of the Treasury may provide that  
15           an analysis of a trade or business or industry  
16           of a member need not be conducted if such Sec-  
17           retary determines such analysis is not necessary  
18           because the taking into account of such member  
19           would not significantly affect the determination  
20           under this paragraph.

21           “(6) ADVANCE NOTICE.—

22                   “(A) IN GENERAL.—The Secretary of the  
23                   Treasury shall, before granting a waiver under  
24                   this subsection, require each applicant to pro-  
25                   vide evidence satisfactory to such Secretary that



1 the applicant has provided notice of the filing of  
2 the application for such waiver to each affected  
3 party (as defined in section 4001(a)(21)). Such  
4 notice shall include a description of the extent  
5 to which the plan is funded for benefits which  
6 are guaranteed under title IV and for benefit li-  
7 abilities.

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

13 “(7) RESTRICTION ON PLAN AMENDMENTS.—

14 “(A) IN GENERAL.—No amendment of a  
15 plan which increases the liabilities of the plan  
16 by reason of any increase in benefits, any  
17 change in the accrual of benefits, or any change  
18 in the rate at which benefits become nonforfeit-  
19 able under the plan shall be adopted if a waiver  
20 under this subsection or an extension of time  
21 under section 304(d) is in effect with respect to  
22 the plan, or if a plan amendment described in  
23 subsection (d)(2) has been made at any time in  
24 the preceding 12 months (24 months in the  
25 case of a multiemployer plan). If a plan is

1 amended in violation of the preceding sentence,  
2 any such waiver, or extension of time, shall not  
3 apply to any plan year ending on or after the  
4 date on which such amendment is adopted.

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

7 “(i) the Secretary of the Treasury de-  
8 termines to be reasonable and which pro-  
9 vides for only de minimis increases in the  
10 liabilities of the plan,

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

13 “(iii) is required as a condition of  
14 qualification under part I of subchapter D  
15 of chapter 1 of the Internal Revenue Code  
16 of 1986.

17 “(8) CROSS REFERENCE.—For corresponding  
18 duties of the Secretary of the Treasury with regard  
19 to implementation of the Internal Revenue Code of  
20 1986, see section 412(e) of such Code.

21 “(d) MISCELLANEOUS RULES.—

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

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

4                   “(A) is adopted after the close of such plan  
5                   year but no later than 2½ months after the  
6                   close of the plan year (or, in the case of a mul-  
7                   tiemployer plan, no later than 2 years after the  
8                   close of such plan year),

9                   “(B) does not reduce the accrued benefit  
10                   of any participant determined as of the begin-  
11                   ning of the first plan year to which the amend-  
12                   ment applies, and

13                   “(C) does not reduce the accrued benefit of  
14                   any participant determined as of the time of  
15                   adoption except to the extent required by the  
16                   circumstances,

17           shall, at the election of the plan administrator, be  
18           deemed to have been made on the first day of such  
19           plan year. No amendment described in this para-  
20           graph which reduces the accrued benefits of any par-  
21           ticipant shall take effect unless the plan adminis-  
22           trator files a notice with the Secretary of the Treas-  
23           ury notifying him of such amendment and such Sec-  
24           retary has approved such amendment, or within 90  
25           days after the date on which such notice was filed,

1 failed to disapprove such amendment. No amend-  
2 ment described in this subsection shall be approved  
3 by the Secretary of the Treasury unless such Sec-  
4 retary determines that such amendment is necessary  
5 because of a substantial business hardship (as deter-  
6 mined under subsection (c)(2)) and that a waiver  
7 under subsection (c) (or, in the case of a multiem-  
8 ployer plan, any extension of the amortization period  
9 under section 304(d)) is unavailable or inadequate.

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

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

“Sec. 302. Minimum funding standards.”.

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

21 **SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DE-**  
22 **FINED BENEFIT PENSION PLANS.**

23 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
24 the Employee Retirement Income Security Act of 1974 (as

1 amended by section 101 of this Act) is amended further  
2 by inserting after section 302 the following new section:

3 “MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER  
4 DEFINED BENEFIT PENSION PLANS

5 “SEC. 303. (a) MINIMUM REQUIRED CONTRIBU-  
6 TION.—For purposes of this section and section  
7 302(a)(2)(A), except as provided in subsection (f), the  
8 term ‘minimum required contribution’ means, with respect  
9 to any plan year of a single-employer plan—

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

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

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

19 “(C) the waiver amortization charge (if  
20 any) for the plan for the plan year as deter-  
21 mined under subsection (e);

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

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

3           “(b) TARGET NORMAL COST.—For purposes of this  
4           section, except as provided in subsection (i)(2) with re-  
5           spect to plans in at-risk status, the term ‘target normal  
6           cost’ means, for any plan year, the present value of all  
7           benefits which are expected to accrue or to be earned  
8           under the plan during the plan year. For purposes of this  
9           subsection, if any benefit attributable to services per-  
10          formed in a preceding plan year is increased by reason  
11          of any increase in compensation during the current plan  
12          year, the increase in such benefit shall be treated as hav-  
13          ing accrued during the current plan year.

14          “(c) SHORTFALL AMORTIZATION CHARGE.—

15                 “(1) IN GENERAL.—For purposes of this sec-  
16                 tion, the shortfall amortization charge for a plan for  
17                 any plan year is the aggregate total of the shortfall  
18                 amortization installments for such plan year with re-  
19                 spect to the shortfall amortization bases for such  
20                 plan year and each of the 6 preceding plan years.

21                 “(2) SHORTFALL AMORTIZATION INSTALL-  
22                 MENT.—The plan sponsor shall determine, with re-  
23                 spect to the shortfall amortization base of the plan  
24                 for any plan year, the amounts necessary to amor-  
25                 tize such shortfall amortization base, in level annual

1 installments over a period of 7 plan years beginning  
2 with such plan year. For purposes of paragraph (1),  
3 the annual installment of such amortization for each  
4 plan year in such 7-plan-year period is the shortfall  
5 amortization installment for such plan year with re-  
6 spect to such shortfall amortization base. In deter-  
7 mining any shortfall amortization installment under  
8 this paragraph, the plan sponsor shall use the seg-  
9 ment rates determined under subparagraph (C) of  
10 subsection (h)(2), applied under rules similar to the  
11 rules of subparagraph (B) of subsection (h)(2).

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

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

18 “(B) the sum of—

19 “(i) the present value (determined  
20 using the segment rates determined under  
21 subparagraph (C) of subsection (h)(2), ap-  
22 plied under rules similar to the rules of  
23 subparagraph (B) of subsection (h)(2)) of  
24 the aggregate total of the shortfall amorti-  
25 zation installments, for such plan year and

1 the 5 succeeding plan years, which have  
2 been determined with respect to the short-  
3 fall amortization bases of the plan for each  
4 of the 6 plan years preceding such plan  
5 year, and

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

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

17 “(A) the funding target of the plan for the  
18 plan year, over

19 “(B) the value of plan assets of the plan  
20 (as reduced under subsection (f)(4)(B)) for the  
21 plan year which are held by the plan on the  
22 valuation date.

23 “(5) EXEMPTION FROM NEW SHORTFALL AM-  
24 ORTIZATION BASE.—



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

7           “(B) TRANSITION RULE.—

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

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

16           “(ii) LIMITATION.—Clause (i) shall  
 17           not apply with respect to any plan year  
 18           after 2007 unless the ratio (expressed as a  
 19           percentage) which—

20                           “(I) the value of plan assets for  
 21                           each preceding plan year after 2006

1 (as reduced under subsection  
2 (f)(4)(A)), bears to

3 “(II) the funding target of the  
4 plan for such preceding plan year (de-  
5 termined without regard to subsection  
6 (i)(1)),

7 is not less than the applicable percentage  
8 with respect to such preceding plan deter-  
9 mined under clause (i).

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

14 “(I) to which this part (as in ef-  
15 fect on the day before the date of the  
16 enactment of the Pension Protection  
17 Act of 2005) applied for the plan year  
18 beginning in 2006, and

19 “(II) to which section 302(d) (as  
20 so in effect) did not apply for such  
21 plan year.

22 “(6) 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 shortfall am-

1       ortization charge for such plan year and succeeding  
2       plan years, the shortfall amortization bases for all  
3       preceding plan years (and all shortfall amortization  
4       installments determined with respect to such bases)  
5       shall be reduced to zero.

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

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

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

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

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

23       “(e) WAIVER AMORTIZATION CHARGE.—

24               “(1) DETERMINATION OF WAIVER AMORTIZA-  
25      TION CHARGE.—The waiver amortization charge (if

1 any) for a plan for any plan year is the aggregate  
2 total of the waiver amortization installments for  
3 such plan year with respect to the waiver amortiza-  
4 tion bases for each of the 5 preceding plan years.

5 “(2) WAIVER AMORTIZATION INSTALLMENT.—

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

16 “(3) INTEREST RATE.—In determining any

17 waiver amortization installment under this sub-  
18 section, the plan sponsor shall use the segment rates  
19 determined under subparagraph (C) of subsection  
20 (h)(2), applied under rules similar to the rules of  
21 subparagraph (B) of subsection (h)(2).

22 “(4) WAIVER AMORTIZATION BASE.—The waiv-

23 er amortization base of a plan for a plan year is the  
24 amount of the waived funding deficiency (if any) for  
25 such plan year under section 302(c).

1           “(5) EARLY DEEMED AMORTIZATION UPON AT-  
2           TAINMENT OF FUNDING TARGET.—In any case in  
3           which the funding shortfall of a plan for a plan year  
4           is zero, for purposes of determining the waiver am-  
5           ortization charge for such plan year and succeeding  
6           plan years, the waiver amortization base for all pre-  
7           ceding plan years shall be reduced to zero.

8           “(f) REDUCTION OF MINIMUM REQUIRED CONTRIBU-  
9           TION BY PRE-FUNDING BALANCE AND FUNDING STAND-  
10          ARD CARRYOVER BALANCE.—

11           “(1) ELECTION TO MAINTAIN BALANCES.—

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

15           “(B) FUNDING STANDARD CARRYOVER  
16           BALANCE.—

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

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

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

3                   “(II) had a positive balance in  
4                   the funding standard account under  
5                   section 302(b) as in effect for such  
6                   plan year and determined as of the  
7                   end of such plan year.

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

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

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

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

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

22                  “(A) IN GENERAL.—Except as provided in  
23                  subparagraphs (B) and (C), in the case of any  
24                  plan year in which the plan sponsor elects to  
25                  credit against the minimum required contribu-

1           tion for the current plan year all or a portion  
2           of the pre-funding balance or the funding  
3           standard carryover balance for the current plan  
4           year (not in excess of such minimum required  
5           contribution), the minimum required contribu-  
6           tion for the plan year shall be reduced by the  
7           amount so credited by the plan sponsor. For  
8           purposes of the preceding sentence, the min-  
9           imum required contribution shall be determined  
10          after taking into account any waiver under sec-  
11          tion 302(c).

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

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

23                   “(i) the value of plan assets for the  
24                   preceding plan year (as reduced under  
25                   paragraph (4)(C)), bears to

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

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

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

21                  “(B) DETERMINATION OF EXCESS ASSETS,  
22                  FUNDING SHORTFALL, AND FUNDING TARGET  
23                  ATTAINMENT PERCENTAGE.—

24                  “(i) IN GENERAL.—For purposes of  
25                  subsections (a), (c)(4)(B), and (d)(2)(A),



1 the value of plan assets is deemed to be  
2 such amount, reduced by the amount of  
3 the pre-funding balance and the funding  
4 standard carryover balance.

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

21 “(C) AVAILABILITY OF BALANCES IN PLAN  
22 YEAR FOR CREDITING AGAINST MINIMUM RE-  
23 QUIRED CONTRIBUTION.—For purposes of  
24 paragraph (3)(C)(i) of this subsection, the value  
25 of plan assets is deemed to be such amount, re-

1           duced by the amount of the pre-funding bal-  
2           ance.

3           “(5) ELECTION TO REDUCE BALANCE PRIOR TO  
4           DETERMINATIONS OF VALUE OF PLAN ASSETS AND  
5           CREDITING AGAINST MINIMUM REQUIRED CONTRIBU-  
6           TION.—

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

18                   “(B) COORDINATION BETWEEN PRE-FUND-  
19          ING BALANCE AND FUNDING STANDARD CARRY-  
20          OVER BALANCE.—To the extent that any plan  
21          has a funding standard carryover balance great-  
22          er than zero, no election may be made under  
23          subparagraph (A) with respect to the pre-fund-  
24          ing balance.

25                   “(6) PRE-FUNDING BALANCE.—

1           “(A) IN GENERAL.—A pre-funding balance  
2 maintained by a plan shall consist of a begin-  
3 ning balance of zero, increased and decreased to  
4 the extent provided in subparagraphs (B) and  
5 (C), and adjusted further as provided in para-  
6 graph (8).

7           “(B) INCREASES.—As of the valuation  
8 date for each plan year beginning after 2007,  
9 the pre-funding balance of a plan shall be in-  
10 creased by the amount elected by the plan spon-  
11 sor for the plan year. Such amount shall not ex-  
12 ceed the excess (if any) of—

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

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

1           the date that payment of such portion is  
2           made).

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

7                   “(i) the amount of such balance cred-  
8                   ited under paragraph (2) (if any) in reduc-  
9                   ing the minimum required contribution of  
10                  the plan for the preceding plan year, and

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

13           “(7) FUNDING STANDARD CARRYOVER BAL-  
14           ANCE.—

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

21                   “(B) BEGINNING BALANCE.—The begin-  
22                   ning balance of the funding standard carryover  
23                   balance shall be the positive balance described  
24                   in paragraph (1)(B)(ii)(II).

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

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

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

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

1 distributions, and other plan payments made during  
2 such period.

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

7 “(g) VALUATION OF PLAN ASSETS AND LIABIL-  
8 ITIES.—

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

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

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

20 “(B) EXCEPTION FOR SMALL PLANS.—If,  
21 on each day during the preceding plan year, a  
22 plan had 500 or fewer participants, the plan  
23 may designate any day during the plan year as  
24 its valuation date for such plan year and suc-  
25 ceeding plan years. For purposes of this sub-

1 paragraph, all defined benefit plans which are  
2 single-employer plans and are maintained by  
3 the same employer (or any member of such em-  
4 ployer's controlled group) shall be treated as 1  
5 plan, but only participants with respect to such  
6 employer or member shall be taken into ac-  
7 count.

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

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

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

22 “(3) AUTHORIZATION OF USE OF ACTUARIAL  
23 VALUE.—For purposes of this section, the value of  
24 plan assets shall be determined on the basis of any  
25 reasonable actuarial method of valuation which takes

1 into account fair market value and which is per-  
2 mitted under regulations prescribed by the Secretary  
3 of the Treasury, except that—

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

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

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

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



1 after 2007 shall be taken into account only in  
2 an amount equal to its present value (deter-  
3 mined using the effective rate of interest for the  
4 plan for the preceding plan year) as of the valu-  
5 ation date of the plan for such current plan  
6 year.

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

21 “(5) ACCOUNTING FOR PLAN LIABILITIES.—

22 For purposes of this section—

23 “(A) LIABILITIES TAKEN INTO ACCOUNT  
24 FOR CURRENT PLAN YEAR.—In determining the  
25 value of liabilities under a plan for a plan year,

1 liabilities shall be taken into account to the ex-  
2 tent attributable to benefits (including any early  
3 retirement or similar benefit) accrued or earned  
4 as of the beginning of the plan year.

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

12 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

23 “(2) INTEREST RATES.—

24 “(A) EFFECTIVE INTEREST RATE.—For  
25 purposes of this section, the term ‘effective in-

1           terest rate’ means, with respect to any plan for  
2           any plan year, the single rate of interest which,  
3           if used to determine the present value of the  
4           plan’s liabilities referred to in subsection (d)(1),  
5           would result in an amount equal to the funding  
6           target of the plan for such plan year.

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

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

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

24                 “(iii) in the case of liabilities reason-  
25                 ably determined to be payable after the pe-

1           riod described in clause (ii), the third seg-  
2           ment rate with respect to the applicable  
3           month.

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

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

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

1 year period beginning at the end of the pe-  
2 riod described in clause (i).

3 “(iii) THIRD SEGMENT RATE.—The  
4 term ‘third 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 of the Treasury for such month  
8 on the basis of the corporate bond yield  
9 curve for such month, taking into account  
10 only that portion of such yield curve which  
11 is based on bonds maturing during periods  
12 beginning after the period described in  
13 clause (ii).

14 “(D) CORPORATE BOND YIELD CURVE.—

15 For purposes of this paragraph—

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

24 “(ii) 3-YEAR WEIGHTED AVERAGE.—  
25 The term ‘3-year weighted average’ means

1 an average determined by using a method-  
2 ology under which the most recent year is  
3 weighted 50 percent, the year preceding  
4 such year is weighted 35 percent, and the  
5 second year preceding such year is weight-  
6 ed 15 percent.

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

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

1 (B) for such month. The Secretary of the  
2 Treasury shall also publish a description of the  
3 methodology used to determine such yield curve  
4 and such rates which is sufficiently detailed to  
5 enable plans to make reasonable projections re-  
6 garding the yield curve and such rates for fu-  
7 ture months based on the plan's projection of  
8 future interest rates.

9 “(G) TRANSITION RULE.—

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

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

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

1                   percent minus the applicable percent-  
2                   age.

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

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

12                  “(3) MORTALITY TABLE.—

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

22                  “(B) SUBSTITUTE MORTALITY TABLE.—

23                  “(i) IN GENERAL.—Upon request by  
24                  the plan sponsor and approval by the Sec-  
25                  retary of the Treasury for a period not to



1 exceed 10 years, a mortality table which  
2 meets the requirements of clause (ii) shall  
3 be used in determining any present value  
4 or making any computation under this sec-  
5 tion. A mortality table described in this  
6 clause shall cease to be in effect if the plan  
7 actuary determines at any time that such  
8 table does not meet the requirements of  
9 subclauses (I) and (II) of clause (ii).

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

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

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

21 “(iii) DEADLINE FOR DISPOSITION OF  
22 APPLICATION.—Any mortality table sub-  
23 mitted to the Secretary of the Treasury for  
24 approval under this subparagraph shall be  
25 treated as in effect for the succeeding plan

1           year unless such Secretary, during the  
2           180-day period beginning on the date of  
3           such submission, disapproves of such table  
4           and provides the reasons that such table  
5           fails to meet the requirements of clause  
6           (ii).

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

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

1           “(A) the probability that future benefit  
2           payments under the plan will be made in the  
3           form of optional forms of benefits provided  
4           under the plan (including lump sum distribu-  
5           tions, determined on the basis of the plan’s ex-  
6           perience and other related assumptions), and

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

13          “(5) APPROVAL OF LARGE CHANGES IN ACTU-  
14          ARIAL ASSUMPTIONS.—

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

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

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

1           “(ii) the aggregate unfunded vested  
2           benefits as of the close of the preceding  
3           plan year (as determined under section  
4           4006(a)(3)(E)(iii)) of such plan and all  
5           other plans maintained by the contributing  
6           sponsors (as defined in section  
7           4001(a)(13)) and members of such spon-  
8           sors’ controlled groups (as defined in sec-  
9           tion 4001(a)(14)) which are covered by  
10          title IV (disregarding plans with no un-  
11          funded vested benefits) exceed  
12          \$50,000,000, and

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

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

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

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

5           “(i) the present value of all liabilities  
6 to participants and their beneficiaries  
7 under the plan for the plan year, as deter-  
8 mined by using, in addition to the actu-  
9 arial assumptions described in subsection  
10 (h), the supplemental actuarial assump-  
11 tions described in subparagraph (B), plus

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

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

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

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

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

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

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

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

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

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

1           “(A) IN GENERAL.—In any case in which  
2 a plan which is in at-risk status for a plan year  
3 has been in such status for a consecutive period  
4 of fewer than 5 plan years, the applicable  
5 amount of the funding target and of the target  
6 normal cost shall be, in lieu of the amount de-  
7 termined without regard to this paragraph, the  
8 sum of—

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

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

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

22                   “(i) 20 percent, by

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

1       “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
2 TIONS.—

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

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

14           “(3) ACCELERATED QUARTERLY CONTRIBUTION  
15 SCHEDULE FOR UNDERFUNDED PLANS.—

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



1 payment for the period of the underpayment,  
2 using an interest rate equal to the excess of—

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

6 “(ii) the effective rate of interest for  
7 the plan for the plan year.

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

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

13 “(I) the required installment,  
14 over

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21          “(E) DEFINITIONS.—For purposes of this  
22          subparagraph:

23                 “(i) LIQUIDITY SHORTFALL.—The  
24                 term ‘liquidity shortfall’ means, with re-  
25                 spect to any required installment, an

1 amount equal to the excess (as of the last  
2 day of the quarter for which such install-  
3 ment is made) of—

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

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

8 “(ii) BASE AMOUNT.—

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

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

1                   cumstances, the base amount with re-  
2                   spect to such quarter shall be deter-  
3                   mined without regard to amounts re-  
4                   lated to those nonrecurring cir-  
5                   cumstances.

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

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

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

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

24                  “(v) LIQUID ASSETS.—The term ‘liq-  
25                  uid assets’ means cash, marketable securi-

1                   ties, and such other assets as specified by  
2                   the Secretary of the Treasury in regula-  
3                   tions.

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

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

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

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

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

21                         “(B) the unpaid balance of such payment  
22                         (including interest), when added to the aggre-  
23                         gate unpaid balance of all preceding such pay-  
24                         ments for which payment was not made before



1           the due date (including interest), exceeds  
2           \$1,000,000,  
3       then there shall be a lien in favor of the plan in the  
4       amount determined under paragraph (3) upon all  
5       property and rights to property, whether real or per-  
6       sonal, belonging to such person and any other per-  
7       son who is a member of the same controlled group  
8       of which such person is a member.

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

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

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

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

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

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

23          “(5) ENFORCEMENT.—Any lien created under  
24          paragraph (1) may be perfected and enforced only  
25          by the Pension Benefit Guaranty Corporation, or at

1 the direction of the Pension Benefit Guaranty Cor-  
2 poration, by the contributing sponsor (or any mem-  
3 ber of the controlled group of the contributing spon-  
4 sor).

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

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

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

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



1           “(1) IN GENERAL.—No defined benefit plan  
2           which is a single-employer plan may provide benefits  
3           to which participants are entitled solely by reason of  
4           the occurrence of a plant shutdown or any other un-  
5           predictable contingent event occurring during any  
6           plan year if the funding target attainment percent-  
7           age as of the valuation date of the plan for such  
8           plan year—

9                     “(A) is less than 80 percent, or

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

12           “(2) EXEMPTION.—Paragraph (1) shall cease  
13           to apply with respect to any plan year, effective as  
14           of the first date of the plan year, upon payment by  
15           the plan sponsor of a contribution (in addition to  
16           any minimum required contribution under section  
17           303) equal to—

18                    “(A) in the case of paragraph (1)(A), the  
19           amount of the increase in the funding target of  
20           the plan (under section 303) for the plan year  
21           attributable to the occurrence referred to in  
22           paragraph (1), and

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

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

3 “(3) UNPREDICTABLE CONTINGENT EVENT.—

4 For purposes of this subsection, the term ‘unpredict-  
5 able contingent event’ means an event other than—

6 “(A) attainment of any age, performance  
7 of any service, receipt or derivation of any com-  
8 pensation, or the occurrence of death or dis-  
9 ability, or

10 “(B) an event which is reasonably and reli-  
11 ably predictable (as determined by the Sec-  
12 retary of the Treasury).

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

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

21 (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-  
22 CRUALS.—

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

1       “(h) FUNDING-BASED LIMITS ON BENEFITS AND  
2 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER  
3 PLANS.—

4               “(1) LIMITATIONS ON PLAN AMENDMENTS IN-  
5 CREATING LIABILITY FOR BENEFITS.—

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

17                               “(i) less than 80 percent, or

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

20 For purposes of this subparagraph, any in-  
21 crease in benefits under the plan by reason of  
22 an increase in the benefit rate provided under  
23 the plan or on the basis of an increase in com-  
24 pensation shall be treated as effected by plan  
25 amendment.

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

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

14           “(ii) in the case of subparagraph  
15 (A)(ii), the amount sufficient to result in a  
16 funding target attainment percentage of 80  
17 percent.

18           “(2) FUNDING-BASED LIMITATION ON CERTAIN  
19 FORMS OF DISTRIBUTION.—

20           “(A) IN GENERAL.—A defined benefit plan  
21 which is a single-employer plan shall provide  
22 that, in any case in which the plan’s funding  
23 target attainment percentage as of the valu-  
24 ation date of the plan for a plan year is less  
25 than 80 percent, the plan may not after such



1 date pay any prohibited payment (as defined in  
2 section 206(e)).

3 “(B) EXCEPTION.—Subparagraph (A)  
4 shall not apply to any plan for any plan year  
5 if the terms of such plan (as in effect for the  
6 period beginning on June 29, 2005, and ending  
7 with such plan year) provide for no benefit ac-  
8 cruals with respect to any participant during  
9 such period.

10 “(3) LIMITATIONS ON BENEFIT ACCRUALS FOR  
11 PLANS WITH SEVERE FUNDING SHORTFALLS.—A de-  
12 fined benefit plan which is a single-employer plan  
13 shall provide that, in any case in which the plan’s  
14 funding target attainment percentage as of the valu-  
15 ation date of the plan for a plan year is less than  
16 60 percent, all future benefit accruals under the  
17 plan shall cease as of such date.

18 “(4) NEW PLANS.—Paragraphs (1) and (3)  
19 shall not apply to a plan for the first 5 plan years  
20 of the plan. For purposes of this subsection, the ref-  
21 erence in this subsection to a plan shall include a  
22 reference to any predecessor plan.

23 “(5) PRESUMED UNDERFUNDING FOR PUR-  
24 POSES OF BENEFIT LIMITATIONS BASED ON PRIOR  
25 YEAR’S FUNDING STATUS.—

1           “(A) PRESUMPTION OF CONTINUED  
2 UNDERFUNDING.—In any case in which a ben-  
3 efit limitation under paragraph (1), (2), or (3)  
4 has been applied to a plan with respect to the  
5 plan year preceding the current plan year, the  
6 funding target attainment percentage of the  
7 plan as of the valuation date of the plan for the  
8 current plan year shall be presumed to be equal  
9 to the funding target attainment percentage of  
10 the plan as of the valuation date of the plan for  
11 the preceding plan year until the enrolled actu-  
12 ary of the plan certifies the actual funding tar-  
13 get attainment percentage of the plan as of the  
14 valuation date of the plan for the current plan  
15 year.

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

1 sections, to be the valuation date of the plan for  
2 the current plan year.

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

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

17 “(ii) as of the first day of the 4th  
18 month of the current plan year, the en-  
19 rolled actuary of the plan has not certified  
20 the actual funding target attainment per-  
21 centage of the plan as of the valuation date  
22 of the plan for the current plan year,  
23 until the enrolled actuary so certifies, such first  
24 day shall be deemed, for purposes of such sub-  
25 section, to be the valuation date of the plan for

1           the current plan year and the funding target at-  
2           tainment percentage of the plan as of such first  
3           day shall, for purposes of such paragraph, be  
4           presumed to be equal to 10 percentage points  
5           less than the funding target attainment per-  
6           centage of the plan as of the valuation date of  
7           the plan for such preceding plan year.

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

22          “(7) FUNDING TARGET ATTAINMENT PERCENT-  
23          AGE.—

24                 “(A) IN GENERAL.—For purposes of this  
25                 subsection, the term ‘funding target attainment

1 percentage' means, with respect to any plan for  
2 any plan year, the ratio (expressed as a per-  
3 centage) which—

4 “(i) the value of plan assets for the  
5 plan year (as determined under section  
6 303(g)) reduced by the pre-funding bal-  
7 ance and the funding standard carryover  
8 balance (within the meaning of section  
9 303(f)), bears to

10 “(ii) the funding target of the plan for  
11 the plan year (as determined under section  
12 303(d)(1), but without regard to section  
13 303(i)(1)).

14 “(B) APPLICATION TO PLANS WHICH ARE  
15 FULLY FUNDED WITHOUT REGARD TO REDUC-  
16 TIONS FOR FUNDING BALANCES.—

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

1 (A) shall be applied without regard to such  
 2 reduction.

3 “(ii) TRANSITION RULE.—Clause (i)  
 4 shall be applied to plan years beginning  
 5 after 2006 and before 2011 by substituting  
 6 for ‘100 percent’ the applicable percentage  
 7 determined in accordance with the fol-  
 8 lowing table:

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

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

1           “(8) DEEMED REDUCTION OF FUNDING BAL-  
2           ANCES.—In the case of a plan maintained pursuant  
3           to 1 or more collective bargaining agreements be-  
4           tween employee representatives and 1 or more em-  
5           ployers—

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

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

1 (2) NOTICE REQUIREMENT.—

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

4 (i) by redesignating subsection (j) as  
5 subsection (k); and

6 (ii) by inserting after subsection (i)  
7 the following new subsection:

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

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

20 (c) EFFECTIVE DATE.—

21 (1) SHUTDOWN BENEFITS.—Except as provided  
22 in paragraph (3), the amendments made by sub-  
23 section (a) shall apply with respect to plant shut-  
24 downs, or other unpredictable contingent events, oc-  
25 ccurring after 2006.



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

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

12                   (A) the later of—

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

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

23                   (B) January 1, 2009.

24           For purposes of clause (i), any plan amendment  
25 made pursuant to a collective bargaining agreement

1 relating to the plan which amends the plan solely to  
2 conform to any requirement added by this subsection  
3 shall not be treated as a termination of such collec-  
4 tive bargaining agreement.

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

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

20 (a) MISCELLANEOUS AMENDMENTS TO TITLE I.—  
21 Subtitle B of title I of the Employee Retirement Income  
22 Security Act of 1974 (29 U.S.C. 1021 et seq.) is amend-  
23 ed—

24 (1) in section 101(d)(3), by striking “section  
25 302(e)” and inserting “section 303(j)”;

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

3                       “(i) a statement as to whether—

4                               “(I) in the case of a defined ben-  
5                               efit plan which is a single-employer  
6                               plan, the plan’s funding target attain-  
7                               ment percentage (as defined in section  
8                               303(d)(2)), or

9                               “(II) in the case of a defined  
10                              benefit plan which is a multiemployer  
11                              plan, the plan’s funded percentage (as  
12                              defined in section 305(d)(2)),

13                      is at least 100 percent (and, if not, the ac-  
14                      tual percentage);”;

15           (3) in section 103(d)(8)(B), by striking “the re-  
16           quirements of section 302(c)(3)” and inserting “the  
17           applicable requirements of sections 303(h) and  
18           304(c)(3)”;

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

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

23                               “(A) in the case of a defined benefit plan  
24                               which is a single-employer plan, the funding

1 target (as defined in section 303(d)(1)) of the  
2 plan, or

3 “(B) in the case of a defined benefit plan  
4 which is a multiemployer plan, the current li-  
5 ability (as defined in section 304(c)(6)(D))  
6 under the plan,

7 the percentage which such value is of the amount  
8 described in subparagraph (A) or (B).”;

9 (5) in section 203(a)(3)(C), by striking “section  
10 302(c)(8)” and inserting “section 302(d)(2)”;

11 (6) in section 204(g)(1), by striking “section  
12 302(c)(8)” and inserting “section 302(d)(2)”;

13 (7) in section 204(i)(2)(B), by striking “section  
14 302(c)(8)” and inserting “section 302(d)(2)”;

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

20 (9) in section 204(i)(4), by striking “section  
21 302(c)(11)(A), without regard to section  
22 302(c)(11)(B)” and inserting “section 302(b)(1),  
23 without regard to section 302(b)(2)”;

24 (10) in section 206(e)(1), by striking “section  
25 302(d)” and inserting “section 303(j)(4)”, and by

1 striking “section 302(e)(5)” and inserting “section  
2 303(j)(4)(E)(i)”;

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

7 (12) in sections 101(e)(3), 403(c)(1), and  
8 408(b)(13), by striking “American Jobs Creation  
9 Act of 2004” and inserting “Pension Protection Act  
10 of 2005”.

11 (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—

12 Title IV of such Act is amended—

13 (1) in section 4001(a)(13) (29 U.S.C.  
14 1301(a)(13)), by striking “302(c)(11)(A)” and in-  
15 serting “302(b)(1)”, by striking “412(c)(11)(A)”  
16 and inserting “412(b)(1)”, by striking  
17 “302(c)(11)(B)” and inserting “302(b)(2)”, and by  
18 striking “412(c)(11)(B)” and inserting “412(b)(2)”;

19 (2) in section 4003(e)(1) (29 U.S.C.  
20 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and  
21 inserting “303(k)(1)(A) and (B)”, and by striking  
22 “412(n)(1)(A) and (B)” and inserting  
23 “430(k)(1)(A) and (B)”;

24 (3) in section 4010(b)(2) (29 U.S.C.  
25 1310(b)(2)), by striking “302(f)(1)(A) and (B)” and

1 inserting “303(k)(1)(A) and (B)”, and by striking  
2 “412(n)(1)(A) and (B)” and inserting  
3 “430(k)(1)(A) and (B)”;

4 (4) in section 4011(b) (29 U.S.C. 1311(b)), by  
5 striking “to which” and all that follows and insert-  
6 ing “for any plan year for which the plan’s funding  
7 target attainment percentage (as defined in section  
8 303(d)(2)) is at least 90 percent.”;

9 (5) in section 4062(c)(1) (29 U.S.C.  
10 1362(c)(1)), by striking paragraphs (1), (2), and (3)  
11 and inserting the following:

12 “(1)(A) in the case of a single-employer plan,  
13 the sum of the shortfall amortization charge (within  
14 the meaning of section 303(c)(1) of this Act and  
15 430(c)(1) of the Internal Revenue Code of 1986)  
16 with respect to the plan (if any) for the plan year  
17 in which the termination date occurs, plus the aggre-  
18 gate total of shortfall amortization installments (if  
19 any) determined for succeeding plan years under  
20 section 303(c)(2) of this Act and section 430(c)(2)  
21 of such Code (which, for purposes of this subpara-  
22 graph, shall include any increase in such sum which  
23 would result if all applications for waivers of the  
24 minimum funding standard under section 302(c) of  
25 this Act and section 412(c) of such Code which are

1 pending with respect to such plan were denied and  
2 if no additional contributions (other than those al-  
3 ready made by the termination date) were made for  
4 the plan year in which the termination date occurs  
5 or for any previous plan year), or

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

24 “(2)(A) in the case of a single-employer plan,  
25 the sum of the waiver amortization charge (within

1 the meaning of section 303(e)(1) of this Act and  
2 430(j)(2) of the Internal Revenue Code of 1986)  
3 with respect to the plan (if any) for the plan year  
4 in which the termination date occurs, plus the aggre-  
5 gate total of waiver amortization installments (if  
6 any) determined for succeeding plan years under  
7 section 303(e)(2) of this Act and section 430(j)(3)  
8 of such Code, or

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

14 “(3) in the case of a multiemployer plan, the  
15 outstanding balance of the amount of decreases in  
16 the minimum funding standard allowed before such  
17 date under section 304(d) of this Act or section  
18 431(d) of such Code (if any);”;

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

21 (7) in section 4243(a)(1)(B) (29 U.S.C.  
22 1423(a)(1)(B)), by striking “302(a)” and inserting  
23 “304(a)”, and, in clause (i), by striking “302(a)”  
24 and inserting “304(a)”;



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

4           (9) in section 4243(f)(2) (29 U.S.C.  
5   1423(f)(2)), by striking “303(c)” and inserting  
6   “302(c)(3)”;

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

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

18           (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-  
19 PORARY VARIANCES.—

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

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

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

3 **Subtitle B—Amendments to**  
4 **Internal Revenue Code of 1986**

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

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

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

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

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

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

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

1           determined under section 430 for the plan for  
2           the plan year,

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

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

15          “(b) LIABILITY FOR CONTRIBUTIONS.—

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

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

1 paragraph (1) is a member of a controlled group,  
2 each member of such group shall be jointly and sev-  
3 erally liable for payment of such contributions.

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

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

8 “(A) IN GENERAL.—If—

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

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

20 the Secretary may, subject to subparagraph  
21 (C), waive the requirements of subsection (a)  
22 for such year with respect to all or any portion  
23 of the minimum funding standard. The Sec-  
24 retary shall not waive the minimum funding  
25 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 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:

<b>“In the case of a plan year beginning in calendar year:</b>	<b>The appli- cable per- centage is:</b>
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:

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

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

10                   “(i) IN GENERAL.—The amount of  
 11                   any required installment shall be 25 per-  
 12                   cent of the required annual payment.

13                   “(ii) REQUIRED ANNUAL PAYMENT.—  
 14                   For purposes of clause (i), the term ‘re-  
 15                   quired annual payment’ means the lesser  
 16                   of—

17                   “(I) 90 percent of the minimum  
 18                   required contribution (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 sub-  
18          section—

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           “(B) DUE DATE; REQUIRED INSTALL-  
2           MENT.—The terms ‘due date’ and ‘required in-  
3           stallment’ have the meanings given such terms  
4           by subsection (j), except that in the case of a  
5           payment other than a required installment, the  
6           due date shall be the date such payment is re-  
7           quired to be made under section 430.

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

12          “(I) QUALIFIED TRANSFERS TO HEALTH BENEFIT  
13          ACCOUNTS.—In the case of a qualified transfer (as de-  
14          fined in section 420), any assets so transferred shall not,  
15          for purposes of this section, be treated as assets in the  
16          plan.”.

17          (b) EFFECTIVE DATE.—The amendments made by  
18          this section shall apply with respect to plan years begin-  
19          ning after December 31, 2006.

20          **SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EM-**  
21          **PLOYER PLANS.**

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

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 suchapter 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:

<b>“In the case of a plan year beginning in calendar year:</b>	<b>The appli- cable per- centage is:</b>
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 amend-  
20 ed—

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 amend-  
4       ed—

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 amend-  
5           ed—

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

8                   (B) by striking “section 412(m)” and in-  
9                   serting “section 430(j)(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:

<b>In the case of a plan year beginning in calendar year:</b>	<b>The appli- cable per- centage is:</b>
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 para-  
6 graph—

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 AUTHORITY.—If the Secretary of the Treasury  
2 finds that the lowest rate of interest  
3 permissible under subclause (I) is un-  
4 reasonably high, such Secretary may  
5 prescribe a lower rate of interest, ex-  
6 cept that such rate may not be less  
7 than 80 percent of the average rate  
8 determined under such subclause.  
9

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 **EMPLOYER 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 in-  
20 clude—

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 benchmarks described in paragraph (3)(A).

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

19 “(1) IN GENERAL.—In any case in which a  
20 multiemployer plan is in critical status for a plan  
21 year as described in paragraph (2) (or otherwise en-  
22 ters into critical status under this section) and no  
23 rehabilitation plan under this subsection with respect  
24 to such multiemployer plan is in effect for the plan  
25 year, the plan sponsor shall, in accordance with this

1 subsection, amend the multiemployer plan to include  
2 a rehabilitation plan under this subsection. The  
3 amendment shall be adopted not later than 240 days  
4 after the date on which the plan enters into critical  
5 status.

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

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

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

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

19 “(A) A plan is described in this subpara-  
20 graph if, as of the beginning of the current plan  
21 year—

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

24 “(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           “(B) any plan sponsor for failure by the  
2           plan sponsor to implement the terms of any  
3           funding improvement plan or rehabilitation plan  
4           adopted under section 305.”.

5           (c) CONFORMING AMENDMENT.—The table of con-  
6 tents in section 1 of such Act (as amended by the pre-  
7 ceding provisions of this Act) is amended further by in-  
8 serting after the item relating to section 304 the following  
9 new item:

          “Sec. 305. Additional funding rules for multiemployer plans in endangered sta-  
          tus or critical status.”.

10          (d) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply with respect to plan years begin-  
12 ning after 2005.

13          (e) SPECIAL RULE FOR 2006.—In the case of any  
14 plan year beginning in 2006, any reference in section 305  
15 of the Employee Retirement Income Security Act of 1974  
16 (as added by this section) to section 304 of such Act (as  
17 added by this Act) shall be treated as a reference to the  
18 corresponding provision of the Employee Retirement In-  
19 come Security Act of 1974 as in effect for plan years be-  
20 ginning in such year.

21 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**  
22 **TIEMPLOYER PLANS.**

23          (a) ADVANCE DETERMINATION OF IMPENDING IN-  
24 SOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the

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 para-  
19 graph—

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 amend-  
5 ed—

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 amend-  
22 ed—

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 in-  
4 clude—

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  
25                 the benchmarks described in paragraph (3)(A).

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

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

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

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

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

24           “(3) CRITICALITY DESCRIPTION.—For purposes  
25 of paragraph (2)(B), a plan is described in this

1 paragraph if the plan is described in at least one of  
2 the following subparagraphs:

3 “(A) A plan is described in this subpara-  
4 graph if, as of the beginning of the current plan  
5 year—

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

8 “(ii) the sum of—

9 “(I) the market value of plan as-  
10 sets, plus

11 “(II) the present value of the  
12 reasonably anticipated employer and  
13 employee contributions for the current  
14 plan year and each of the 6 suc-  
15 ceeding plan years, assuming that the  
16 terms of the one or more collective  
17 bargaining agreements pursuant to  
18 which the plan is maintained for the  
19 current plan year continue in effect  
20 for succeeding plan years,

21 is less than the present value of all non-  
22 forfeitable benefits for all participants and  
23 beneficiaries projected to be payable under  
24 the plan during the current plan year and  
25 each of the 6 succeeding plan years (plus

1 administrative expenses for such plan  
2 years).

3 “(B) A plan is described in this subpara-  
4 graph if, as of the beginning of the current plan  
5 year, the sum of—

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

8 “(ii) the present value of the reason-  
9 ably anticipated employer and employee  
10 contributions for the current plan year and  
11 each of the 4 succeeding plan years, as-  
12 suming that the terms of the one or more  
13 collective bargaining agreements pursuant  
14 to which the plan is maintained for the  
15 current plan year remain in effect for suc-  
16 ceeding plan years,

17 is less than the present value of all nonforfeit-  
18 able benefits for all participants and bene-  
19 ficiaries projected to be payable under the plan  
20 during the current plan year and each of the 4  
21 succeeding plan years (plus administrative ex-  
22 penses for such plan years).

23 “(C) A plan is described in this subpara-  
24 graph if—

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

4           “(ii) the plan has an accumulated  
5           funding deficiency for the current plan  
6           year or is projected to have an accumu-  
7           lated funding deficiency for any of the 4  
8           succeeding plan years, not taking into ac-  
9           count any extension of amortization peri-  
10          ods under section 431(d).

11          “(D) A plan is described in this subpara-  
12          graph if—

13               “(i)(I) the plan’s normal cost for the  
14               current plan year, plus interest (deter-  
15               mined at the rate used for determining  
16               cost under the plan) for the current plan  
17               year on the amount of unfunded benefit li-  
18               abilities under the plan as of the last date  
19               of the preceding plan year, exceeds

20               “(II) the present value, as of the be-  
21               ginning of the current plan year, of the  
22               reasonably anticipated employer and em-  
23               ployee contributions for the current plan  
24               year,



1           “(ii) the present value, as of the be-  
2           ginning of the current plan year, of non-  
3           forfeitable benefits of inactive participants  
4           is greater than the present value, as of the  
5           beginning of the current plan year, of non-  
6           forfeitable benefits of active participants,  
7           and

8           “(iii) the plan is projected to have an  
9           accumulated funding deficiency for the  
10          current plan year or any of the 4 suc-  
11          ceeding plan years, not taking into account  
12          any extension of amortization periods  
13          under section 431(d).

14          “(E) A plan is described in this subpara-  
15          graph if—

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

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

24          “(4) REHABILITATION PLAN.—

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

3                   “(i) amendments to the plan providing  
4                   (under reasonable actuarial assumptions)  
5                   for measures, agreed to by the bargaining  
6                   parties, to increase contributions, reduce  
7                   plan expenditures (including plan mergers  
8                   and consolidations), or reduce future ben-  
9                   efit accruals, or to take any combination of  
10                  such actions, determined necessary to  
11                  cause the plan to cease, during the reha-  
12                  bilitation period, to be in critical status, or

13                   “(ii) reasonable measures to forestall  
14                   possible insolvency (within the meaning of  
15                   section 418E) if the plan sponsor deter-  
16                   mines that, upon exhaustion of all reason-  
17                   able measures, the plan would not cease  
18                   during the rehabilitation period to be in  
19                   critical status.

20           A rehabilitation must provide annual standards  
21           for meeting the requirements of such rehabilita-  
22           tion plan.

23           “(B) REHABILITATION PERIOD.—The re-  
24           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 Retirement  
14 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:

<b>“In the case of plan years beginning in:</b>	<b>The applicable percentage is:</b>
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:

<b>“In the case of plan years beginning in:</b>	<b>The applicable percentage is:</b>
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 “(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 the  
7 preceding provisions of this section) is further amended  
8 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:

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

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:

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

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.

## TITLE V—DISCLOSURE

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

(a) APPLICATION OF PLAN FUNDING NOTICE REQUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Section 101(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)) is amended—

(1) in the heading, by striking “MULTIEMPLOYER”;

(2) in paragraph (1), by striking “which is a multiemployer plan”; and

(3) by striking paragraph (2)(B)(iii) and inserting the following:

“(iii)(I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV, or

“(II) in the case of a multiemployer plan, a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on 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 fur-  
24 ther—

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 fur-  
5 ther—

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 sub-  
11           section—

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 dislo-  
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 EVI-  
7 DENCE OF COMPLIANCE.—A fiduciary adviser  
8 referred to in subparagraph (B) who has pro-  
9 vided advice referred to in such subparagraph  
10 shall, for a period of not less than 6 years after  
11 the provision of the advice, maintain any  
12 records necessary for determining whether the  
13 requirements of the preceding provisions of this  
14 paragraph and of subsection (d)(19) have been  
15 met. A transaction prohibited under subsection  
16 (c)(1) shall not be considered to have occurred  
17 solely because the records are lost or destroyed  
18 prior to the end of the 6-year period due to cir-  
19 cumstances beyond the control of the fiduciary  
20 adviser.

21 “(F) EXEMPTION FOR PLAN SPONSOR AND  
22 CERTAIN OTHER FIDUCIARIES.—A plan sponsor  
23 or other person who is a fiduciary (other than  
24 a fiduciary adviser) shall not be treated as fail-  
25 ing to meet the requirements of this section

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.

# TITLE VIII—DEDUCTION 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 amend-  
9 ed—

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 amend-  
4 ed—

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       tion 412(c)” and inserting “sections 430(h)(1) and  
2       431(c)(3) and (6)”.

3       (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to contributions for taxable years  
5 beginning after December 31, 2006.

6 **SEC. 802. UPDATING DEDUCTION RULES FOR COMBINA-**  
7 **TION OF PLANS.**

8       (a) **IN GENERAL.**—Subparagraph (C) of section  
9 404(a)(7) of the Internal Revenue Code of 1986 (relating  
10 to limitation on deductions where combination of defined  
11 contribution plan and defined benefit plan) is amended by  
12 adding after clause (ii) the following new clause:

13               “(iii) **LIMITATION.**—In the case of  
14               employer contributions to 1 or more de-  
15               fined contribution plans, this paragraph  
16               shall only apply to the extent that such  
17               contributions exceed 6 percent of the com-  
18               pensation otherwise paid or accrued during  
19               the taxable year to the beneficiaries under  
20               such plans. For purposes of this clause,  
21               amounts carried over from preceding tax-  
22               able years under subparagraph (B) shall  
23               be treated as employer contributions to 1  
24               or more defined contributions to the extent  
25               attributable to employer contributions to

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 re-  
13          garding—

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 un-  
9           less—

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 arrange-  
11 ment—

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 amend-  
8 ed—

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 show-  
 4 ing—

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           “(A) the maximum amount of reimburse-  
2           ment allowable to the employee for a plan year  
3           under a health flexible spending arrangement or  
4           the dependent care flexible spending arrange-  
5           ment, as the case may be, over

6           “(B) the actual amount of reimbursement  
7           for such year under such arrangement.”.

8           (b) **EFFECTIVE DATE.**—The amendments made by  
9           subsection (a) shall apply to taxable years beginning after  
10          December 31, 2005.

11 **SEC. 1003. DISTRIBUTIONS FROM GOVERNMENTAL RETIRE-**  
12 **MENT PLANS FOR HEALTH AND LONG-TERM**  
13 **CARE INSURANCE FOR PUBLIC SAFETY OFFI-**  
14 **CERS.**

15          (a) **IN GENERAL.**—Section 402 of the Internal Rev-  
16          enue Code of 1986 (relating to taxability of beneficiary  
17          of employees’ trust) is amended by adding at the end the  
18          following new subsection:

19          “(1) **DISTRIBUTIONS FROM GOVERNMENTAL PLANS**  
20 **FOR HEALTH AND LONG-TERM CARE INSURANCE.**—

21                 “(1) **IN GENERAL.**—In the case of an employee  
22                 who is an eligible retired public safety officer who  
23                 makes the election described in paragraph (6) with  
24                 respect to any taxable year of such employee, gross  
25                 income of such employee for such taxable year does

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 sub-  
11 section—

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.

Passed the House of Representatives December 15,  
2005.

Attest:

*Clerk.*