

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1783

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.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRASSLEY (for himself, Mr. ENZI, Mr. KENNEDY, and Mr. BAUCUS)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pension Security and Transparency Act of 2005”.

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

Sec. 1. Short title and table of contents.

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TITLE I—FUNDING AND DEDUCTION RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

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.
- Sec. 105. Special rules for multiple employer plans of certain cooperatives.
- Sec. 106. Temporary relief for certain rescued plans.

Subtitle B—Amendments to Internal Revenue Code of 1986

- Sec. 111. Modifications of the minimum funding standards.
- Sec. 112. Funding rules applicable to single-employer pension plans.
- Sec. 113. Benefit limitations under single-employer plans.
- Sec. 114. Increase in deduction limit for single-employer plans.
- Sec. 115. Technical and conforming amendments.

Subtitle C—Interest Rate Assumptions and Deductible Amounts for 2006

- Sec. 121. Extension of replacement of 30-year Treasury rates.
- Sec. 122. Deduction limits for plan contributions.
- Sec. 123. Updating deduction rules for combination of plans.

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

Subtitle A—Funding Rules

PART I—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. Special rule for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation.
- Sec. 205. Withdrawal liability reforms.

PART II—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.

PART III—SUNSET OF FUNDING RULES

- Sec. 216. Sunset of funding rules.

Subtitle B—Deduction and Related Provisions

- Sec. 221. Deduction limits for multiemployer plans.
- Sec. 222. Transfer of excess pension assets to multiemployer health plan.

TITLE III—INTEREST RATE ASSUMPTIONS

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- Sec. 301. Interest rate assumption for determination of lump sum distributions.
- Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.
- Sec. 303. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.
- Sec. 304. Modification of pension funding requirements for plans subject to current transition rule.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.
- Sec. 402. Authority to enter alternative funding agreements to prevent plan terminations.
- Sec. 403. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
- Sec. 404. Limitation on PBGC guarantee of shutdown and other benefits.
- Sec. 405. Rules relating to bankruptcy of employer.
- Sec. 406. PBGC premiums for new plans of small employers.
- Sec. 407. PBGC premiums for small and new plans.
- Sec. 408. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 409. Rules for substantial owner benefits in terminated plans.
- Sec. 410. Acceleration of PBGC computation of benefits attributable to recoveries from employers.
- Sec. 411. Treatment of certain plans where cessation or change in membership of a controlled group.
- Sec. 412. Effect of title.

TITLE V—DISCLOSURE

- Sec. 501. Defined benefit plan funding notice.
- Sec. 502. Access to multiemployer pension plan information.
- Sec. 503. Additional annual reporting requirements.
- Sec. 504. Timing of annual reporting requirements.
- Sec. 505. Section 4010 filings with the PBGC.
- Sec. 506. Disclosure of termination information to plan participants.
- Sec. 507. Benefit suspension notice.
- Sec. 508. Study and report by Government Accountability Office.

TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PENSION PLANS

- Sec. 601. Prospective application of age discrimination, conversion, and present value assumption rules.
- Sec. 602. Regulations relating to mergers and acquisitions.

TITLE VII—DIVERSIFICATION RIGHTS AND OTHER PARTICIPANT PROTECTIONS UNDER DEFINED CONTRIBUTION PLANS

- Sec. 701. Defined contribution plans required to provide employees with freedom to invest their plan assets.
- Sec. 702. Notice of freedom to divest employer securities or real property.
- Sec. 703. Periodic pension benefit statements.
- Sec. 704. Notice to participants or beneficiaries of blackout periods.
- Sec. 705. Allowance of, and credit for, additional IRA payments in certain bankruptcy cases.

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- Sec. 706. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.
- Sec. 707. Increase in maximum bond amount.

TITLE VIII—INFORMATION TO ASSIST PENSION PLAN
PARTICIPANTS

- Sec. 801. Defined contribution plans required to provide adequate investment education to participants.
- Sec. 802. Independent investment advice provided to plan participants.
- Sec. 803. Treatment of qualified retirement planning services.
- Sec. 804. Increase in penalties for coercive interference with exercise of ERISA rights.
- Sec. 805. Administrative provision.

TITLE IX—PROVISIONS RELATING TO SPOUSAL PENSION
PROTECTION

- Sec. 901. Regulations on time and order of issuance of domestic relations orders.
- Sec. 902. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
- Sec. 903. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.
- Sec. 904. Requirement for additional survivor annuity option.

TITLE X—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION
RULES

- Sec. 1001. Clarifications regarding purchase of permissive service credit.
- Sec. 1002. Allow rollover of after-tax amounts in annuity contracts.
- Sec. 1003. Clarification of minimum distribution rules for governmental plans.
- Sec. 1004. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 1005. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
- Sec. 1006. Faster vesting of employer nonelective contributions.
- Sec. 1007. Allow direct rollovers from retirement plans to Roth IRAS.
- Sec. 1008. Elimination of higher penalty on certain simple plan distributions.
- Sec. 1009. Simple plan portability.
- Sec. 1010. Eligibility for participation in retirement plans.
- Sec. 1011. Transfers to the PBGC.
- Sec. 1012. Missing participants.
- Sec. 1013. Modifications of rules governing hardships and unforeseen financial emergencies.

TITLE XI—ADMINISTRATIVE PROVISIONS

- Sec. 1101. Employee plans compliance resolution system.
- Sec. 1102. Notice and consent period regarding distributions.
- Sec. 1103. Reporting simplification.
- Sec. 1104. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 1105. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 1106. Withholding on distributions from governmental section 457 plans.

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- Sec. 1107. Treatment of defined benefit plan as governmental plan.
- Sec. 1108. Increasing participation in cash or deferred plans through automatic contribution arrangements.
- Sec. 1109. Treatment of investment of assets by plan where participant fails to exercise investment election.
- Sec. 1110. Clarification of fiduciary rules.

TITLE XII—UNITED STATES TAX COURT MODERNIZATION

- Sec. 1200. Amendment of 1986 Code.
- Sec. 1201. Annuities for survivors of Tax Court judges who are assassinated.
- Sec. 1202. Cost-of-living adjustments for Tax Court judicial survivor annuities.
- Sec. 1203. Life insurance coverage for Tax Court judges.
- Sec. 1204. Cost of life insurance coverage for Tax Court judges age 65 or over.
- Sec. 1205. Modification of timing of lump-sum payment of judges' accrued annual leave.
- Sec. 1206. Participation of Tax Court judges in the Thrift Savings Plan.
- Sec. 1207. Exemption of teaching compensation of retired judges from limitation on outside earned income.
- Sec. 1208. General provisions relating to Magistrate Judges of the Tax Court.
- Sec. 1209. Annuities to surviving spouses and dependent children of Magistrate Judges of the Tax Court.
- Sec. 1210. Retirement and annuity program.
- Sec. 1211. Incumbent Magistrate Judges of the Tax Court.
- Sec. 1212. Provisions for recall.
- Sec. 1213. Effective date.

TITLE XIII—OTHER PROVISIONS

Subtitle A—Administrative Provision

- Sec. 1301. Provisions relating to plan amendments.
- Sec. 1302. Authority to the Secretary of Labor, Secretary of the Treasury, and the Pension Benefit Guaranty Corporation to postpone certain deadlines.

Subtitle B—Governmental Pension Plan Equalization

- Sec. 1311. Definition of governmental plan.
- Sec. 1312. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 1313. Clarification that Tribal governments are subject to the same defined benefit plan rules and regulations applied to State and other local governments, their police and firefighters.
- Sec. 1314. Effective date.

Subtitle C—Miscellaneous Provisions

- Sec. 1321. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.
- Sec. 1322. Treatment of death benefits from corporate-owned life insurance.

Subtitle D—Other Related Pension Provisions

PART I—HEALTH AND MEDICAL BENEFITS

- Sec. 1331. Use of excess pension assets for future retiree health benefits.

- Sec. 1332. Special rules for funding of collectively bargained retiree health benefits.
- Sec. 1333. Allowance of reserve for medical benefits of plans sponsored by bona fide associations.

PART II—CASH OR DEFERRED ARRANGEMENTS

- Sec. 1336. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.
- Sec. 1337. State and local governments eligible to maintain section 401(k) plans.

PART III—EXCESS CONTRIBUTIONS

- Sec. 1339. Excess contributions.

PART IV—OTHER PROVISIONS

- Sec. 1341. Amendments relating to prohibited transactions.
- Sec. 1342. Federal Task Force on Older Workers.
- Sec. 1343. Technical corrections to Saver Act.

1 **TITLE I—FUNDING AND DEDUC-**
 2 **TION RULES FOR SINGLE-EM-**
 3 **PLOYER DEFINED BENEFIT**
 4 **PLANS AND RELATED PROVI-**
 5 **SIONS**

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

9 **SEC. 101. MINIMUM FUNDING STANDARDS.**

10 (a) REPEAL OF EXISTING FUNDING RULES.—Sec-
 11 tions 302 through 308 of the Employee Retirement In-
 12 come Security Act of 1974 (29 U.S.C. 1082 through
 13 1086) are repealed.

14 (b) NEW MINIMUM FUNDING STANDARDS.—Part 3
 15 of subtitle B of title I of such Act (as amended by sub-

1 section (a)) is amended by inserting after section 301 the
2 following new section:

3 “MINIMUM FUNDING STANDARDS

4 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM
5 FUNDING STANDARD.—

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

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

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

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

25 “(C) in the case of a multiemployer plan,
26 the employers make contributions to or under

1 of the number of employers contributing to
2 or under the plan are) 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 contributions 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
21 subparagraph—

22 “(I) IN GENERAL.—The term
23 ‘unpaid minimum required contribution’ means, with respect to any plan
24 year, any minimum required contribu-
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 the Sec-
17 retary of the Treasury determines such analysis
18 is not necessary because the taking into account
19 of such member would not significantly affect
20 the determination 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)) other
4 than the Pension Benefit Guaranty Corporation
5 and in the case of a multiemployer plan, to each
6 employer required to contribute to the plan
7 under subsection (b)(1). Such notice shall in-
8 clude a description of the extent to which the
9 plan is funded for benefits which are guaran-
10 teed under title IV and for benefit liabilities.

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

16 “(7) RESTRICTION ON PLAN AMENDMENTS.—

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

1 subsection (d)(2) has been made at any time in
2 the preceding 24 months. If a plan is amended
3 in violation of the preceding sentence, any such
4 waiver, or extension of time, shall not apply to
5 any plan year ending on or after the date on
6 which such amendment is adopted.

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

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

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

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

19 “(8) CROSS REFERENCE.—For corresponding
20 duties of the Secretary of the Treasury with regard
21 to implementation of the Internal Revenue Code of
22 1986, see section 412(d) of such Code.

23 “(d) MISCELLANEOUS RULES.—

24 “(1) CHANGE IN METHOD OR YEAR.—If the
25 funding method, the valuation date, or a plan year

1 for a plan is changed, the change shall take effect
2 only if approved by the Secretary of the Treasury.

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

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

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

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

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

1 retary has approved such amendment, or within 90
2 days after the date on which such notice was filed,
3 failed to disapprove such amendment. No amend-
4 ment described in this subsection shall be approved
5 by the Secretary of the Treasury unless such Sec-
6 retary determines that such amendment is necessary
7 because of a temporary substantial business hard-
8 ship (as determined under subsection (c)(2)) or a
9 substantial business hardship (as so determined) in
10 the case of a multiemployer plan and that a waiver
11 under subsection (c) (or, in the case of a multiem-
12 ployer plan, any extension of the amortization period
13 under section 304(d)) is unavailable or inadequate.

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

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

 “Sec. 302. Minimum funding standards.”.

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

1 **SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DE-**
2 **FINED BENEFIT PENSION PLANS.**

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

7 “MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER
8 DEFINED BENEFIT PENSION PLANS

9 “SEC. 303. (a) MINIMUM REQUIRED CONTRIBU-
10 TION.—For purposes of this section and section
11 302(a)(2)(A), except as provided in subsection (f), the
12 term ‘minimum required contribution’ means, with respect
13 to any plan year of a defined benefit plan which is a single
14 employer plan—

15 “(1) in any case in which the value of plan as-
16 sets of the plan (as reduced under subsection (f)(4))
17 is less than the funding target of the plan for the
18 plan year, the sum of—

19 “(A) the target normal cost of the plan for
20 the plan year,

21 “(B) the shortfall amortization charge (if
22 any) for the plan for the plan year determined
23 under subsection (c), and

24 “(C) the waiver amortization charge (if
25 any) for the plan for the plan year as deter-
26 mined under subsection (e); or

1 “(2) in any case in which the value of plan as-
2 sets of the plan (as reduced under subsection (f)(4))
3 equals or exceeds the funding target of the plan for
4 the plan year, the target normal cost of the plan for
5 the plan year reduced (but not below zero) by any
6 such excess.

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

18 “(c) SHORTFALL AMORTIZATION CHARGE.—

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

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

3 “(A) DETERMINATION.—The shortfall am-
4 ortization installments are the amounts nec-
5 essary to amortize the shortfall amortization
6 base of the plan for any plan year in level an-
7 nual installments over the 7-plan-year period
8 beginning with such plan year.

9 “(B) SHORTFALL INSTALLMENT.—The
10 shortfall amortization installment for any plan
11 year in the 7-plan-year period under subpara-
12 graph (A) with respect to any shortfall amorti-
13 zation base is the annual installment deter-
14 mined under subparagraph (A) for that year for
15 that base.

16 “(C) SEGMENT RATES.—In determining
17 any shortfall amortization installment under
18 this paragraph, the plan sponsor shall use the
19 segment rates determined under subparagraph
20 (C) of subsection (h)(2), applied under rules
21 similar to the rules of subparagraph (B) of sub-
22 section (h)(2).

23 “(3) SHORTFALL AMORTIZATION BASE.—For
24 purposes of this section, the shortfall amortization

1 base of a plan for a plan year is the excess (if any)
2 of—

3 “(A) the funding shortfall of such plan for
4 such plan year, over

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

17 “(4) FUNDING SHORTFALL.—

18 “(A) IN GENERAL.—For purposes of this
19 section, except as provided in subparagraph
20 (B), the funding shortfall of a plan for any plan
21 year is the excess (if any) of—

22 “(i) the funding target of the plan for
23 the plan year, over

24 “(ii) the value of plan assets of the
25 plan (as reduced under subsection (f)(4))

1 for the plan year which are held by the
2 plan on the valuation date.

3 “(B) TRANSITION RULE FOR AMORTIZA-
4 TION OF FUNDING SHORTFALL.—

5 “(i) IN GENERAL.—Solely for pur-
6 poses of applying paragraph (3) in the case
7 of plan years beginning after 2006 and be-
8 fore 2011, only the applicable percentage
9 of the funding target shall be taken into
10 account under paragraph (3)(A) in deter-
11 mining the funding shortfall for the plan
12 year.

13 “(ii) APPLICABLE PERCENTAGE.—For
14 purposes of subparagraph (A)—

15 “(I) IN GENERAL.—Except as
16 provided in subclause (II), the appli-
17 cable percentage shall be 93 percent
18 for plan years beginning in 2007, 96
19 percent for plan years beginning in
20 2008, and 100 percent for any suc-
21 ceeding plan year.

22 “(II) SMALL PLANS.—In the case
23 of a plan described in subsection
24 (g)(2)(B), the applicable percentage

1 shall be determined in accordance
2 with the following table:

“In the case of a plan year beginning in calendar year:	The applicable percentage is—
2007	92
2008	94
2009	96
2010	98.

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

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

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

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

1 “(A) the value of plan assets for the plan
2 year, bears to

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

6 “(e) WAIVER AMORTIZATION CHARGE.—

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

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

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

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

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

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

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

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

22 “(f) USE OF PREFUNDING BALANCES TO SATISFY
23 MINIMUM REQUIRED CONTRIBUTIONS.—

24 “(1) IN GENERAL.—A plan sponsor may credit
25 any amount of a plan’s prefunding balance for a

1 plan year against the minimum required contribu-
2 tion for the plan year and the amount of the con-
3 tributions an employer is required to make under
4 section 302(b) for the plan year shall be reduced by
5 the amount so credited. Any such amount shall be
6 credited on the first day of the plan year.

7 “(2) PREFUNDING BALANCE.—

8 “(A) BEGINNING BALANCE.—The begin-
9 ning balance of a prefunding balance main-
10 tained by a plan shall be zero, except that if a
11 plan was in effect for a plan year beginning in
12 2006 and had a positive balance in the funding
13 standard account under section 302(b) (as in
14 effect for such plan year) as of the end of such
15 plan year, the beginning balance for the plan
16 for its first plan year beginning after 2006 shall
17 be such positive balance.

18 “(B) INCREASES.—

19 “(i) IN GENERAL.—As of the first day
20 of each plan year beginning after 2007, the
21 prefunding balance of a plan shall be in-
22 creased by the excess (if any) of—

23 “(I) the aggregate amount of em-
24 ployer contributions to the plan for
25 the preceding plan year, over

1 “(II) the minimum required con-
2 tribution for the preceding plan year.

3 “(ii) ADJUSTMENTS FOR INTEREST.—

4 Any excess contributions under clause (i)
5 shall be properly adjusted for interest ac-
6 cruing for the periods between the first
7 day of the current plan year and the dates
8 on which the excess contributions were
9 made, determined by using the effective in-
10 terest rate for the preceding plan year and
11 by treating contributions as being first
12 used to satisfy the minimum required con-
13 tribution.

14 “(iii) CERTAIN CONTRIBUTIONS DIS-
15 REGARDED.—Any contribution which is re-
16 quired to be made under section 206(g) in
17 addition to any contribution required
18 under this section shall not be taken into
19 account for purposes of clause (i).

20 “(C) DECREASES.—As of the first day of
21 each plan year after 2007, the prefunding bal-
22 ance of a plan shall be decreased (but not below
23 zero) by the amount of the balance credited
24 under paragraph (1) against the minimum re-

1 required contribution of the plan for the pre-
2 ceding plan year.

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

16 “(3) LIMITATION FOR UNDERFUNDED PLANS.—

17 “(A) IN GENERAL.—If the ratio (expressed
18 as a percentage) for any plan year which—

19 “(i) the value of plan assets for the
20 preceding plan year, 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, the preceding provisions
25 of this subsection shall not apply unless employ-

1 ers liable for contributions to the plan under
2 section 302(b) make contributions to the plan
3 for the plan year in an aggregate amount not
4 less than the amount determined under sub-
5 paragraph (B). Any contribution required by
6 this subparagraph may not be reduced by any
7 credit otherwise allowable under paragraph (1).

8 “(B) APPLICABLE AMOUNT.—The amount
9 determined under this subparagraph for any
10 plan year is the greater of—

11 “(i) the target normal cost of the plan
12 for the plan year, or

13 “(ii) 25 percent of the minimum re-
14 quired contribution under subsection (a)
15 for the plan year without regard to this
16 subsection.

17 “(4) REDUCTION IN VALUE OF ASSETS.—Solely
18 for purposes of applying subsections (a) and
19 (c)(4)(A)(ii) in determining the minimum required
20 contribution under this section, the value of the plan
21 assets otherwise determined without regard to this
22 paragraph shall be reduced by the amount of the
23 prefunding balance under this subsection.

24 “(g) VALUATION OF PLAN ASSETS AND LIABIL-
25 ITIES.—

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

6 “(2) VALUATION DATE.—For purposes of this
7 section—

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

12 “(B) EXCEPTION FOR SMALL PLANS.—If,
13 on each day during the preceding plan year, a
14 plan had 100 or fewer participants, the plan
15 may designate any day during the plan year as
16 its valuation date for such plan year and suc-
17 ceeding plan years. For purposes of this sub-
18 paragraph, all defined benefit plans (other than
19 multiemployer plans) maintained by the same
20 employer (or any member of such employer’s
21 controlled group) shall be treated as 1 plan, but
22 only employees of such employer or member
23 shall be taken into account.

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

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

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

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

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

20 “(B) AVERAGING ALLOWED.—A plan may
21 determine the value of plan assets on the basis
22 of any reasonable actuarial method of valuation
23 providing for the averaging of fair market val-
24 ues, but only if such method—

1 “(i) is permitted under regulations
2 prescribed by the Secretary of the Treas-
3 ury, and

4 “(ii) does not provide for averaging of
5 such values over more than the period be-
6 ginning on the last day of the 12th month
7 preceding the valuation date and ending on
8 the valuation date (or a similar period in
9 the case of a valuation date which is not
10 the 1st day of a month).

11 “(4) ACCOUNTING FOR CONTRIBUTION RE-
12 CEIPTS.—For purposes of determining the value of
13 assets under paragraph (3)—

14 “(A) PRIOR YEAR CONTRIBUTIONS.—If—

15 “(i) an employer makes any contribu-
16 tion to the plan after the valuation date for
17 the plan year in which the contribution is
18 made, and

19 “(ii) the contribution is for a pre-
20 ceding plan year,

21 the contribution shall be taken into account as
22 an asset of the plan as of the valuation date,
23 except that in the case of any plan year begin-
24 ning after 2007, only the present value (deter-
25 mined as of the valuation date) of such con-

1 tribution may be taken into account. For pur-
2 poses of the preceding sentence, present value
3 shall be determined using the effective interest
4 rate for the preceding plan year to which the
5 contribution is properly allocable.

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

13 “(i) such contributions, and

14 “(ii) interest on such contributions for
15 the period between the date of the con-
16 tributions and the valuation date, deter-
17 mined by using the effective interest rate
18 for the plan year.

19 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

1 “(A) each of which is reasonable (taking
2 into account the experience of the plan and rea-
3 sonable expectations), and

4 “(B) which, in combination, offer the actu-
5 ary’s best estimate of anticipated experience
6 under the plan.

7 “(2) INTEREST RATES.—

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

17 “(B) INTEREST RATES FOR DETERMINING
18 FUNDING TARGET.—For purposes of deter-
19 mining the funding target of a plan for any
20 plan year, the interest rate used in determining
21 the present value of the benefits of the plan
22 shall be—

23 “(i) in the case of benefits reasonably
24 determined to be payable during the 5-year
25 period beginning on the first day of the

1 plan year, the first segment rate with re-
2 spect to the applicable month,

3 “(ii) in the case of benefits reasonably
4 determined to be payable during the 15-
5 year period beginning at the end of the pe-
6 riod described in clause (i), the second seg-
7 ment rate with respect to the applicable
8 month, and

9 “(iii) in the case of benefits reason-
10 ably determined to be payable after the pe-
11 riod described in clause (ii), the third seg-
12 ment rate with respect to the applicable
13 month.

14 “(C) SEGMENT RATES.—For purposes of
15 this paragraph—

16 “(i) FIRST SEGMENT RATE.—The
17 term ‘first 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 5-
25 year period commencing with such month.

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

13 “(iii) THIRD SEGMENT RATE.—The
14 term ‘third 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 of the Treasury for such month
18 on the basis of the corporate bond yield
19 curve for such month, taking into account
20 only that portion of such yield curve which
21 is based on bonds maturing during periods
22 beginning after the period described in
23 clause (ii).

24 “(D) CORPORATE BOND YIELD CURVE.—
25 The term ‘corporate bond yield curve’ means,

1 with respect to any month, a yield curve which
2 is prescribed by the Secretary of the Treasury
3 for such month and which reflects the average,
4 for the 12-month period ending with the month
5 preceding such month, of yields on investment
6 grade corporate bonds with varying maturities.

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 administrator, 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 for such
22 month and each of the rates determined under
23 this paragraph for such month. The Secretary
24 of the Treasury shall also publish a description
25 of the methodology used to determine such yield

1 curve and such rates which is sufficiently de-
2 tailed to enable plans to make reasonable pro-
3 jections regarding the yield curve and such
4 rates for future months based on the plan's
5 projection of future interest rates.

6 “(G) TRANSITION RULE.—

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

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

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

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

1 centage is $33\frac{1}{3}$ percent for plan years be-
2 ginning in 2007 and $66\frac{2}{3}$ percent for plan
3 years beginning in 2008.

4 “(3) MORTALITY TABLES.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraphs (C) and (D), the mortality table
7 used in determining any present value or mak-
8 ing any computation under this section shall be
9 the RP-2000 Combined Mortality Table, using
10 Scale AA, as published by the Society of Actu-
11 aries, as in effect on the date of the enactment
12 of the Pension Security and Transparency Act
13 of 2005 and as revised from time to time under
14 subparagraph (B).

15 “(B) PERIODIC REVISION.—The Secretary
16 of the Treasury shall (at least every 10 years)
17 make revisions in any table in effect under sub-
18 paragraph (A) to reflect the actual experience
19 of pension plans and projected trends in such
20 experience.

21 “(C) SUBSTITUTE MORTALITY TABLE.—

22 “(i) IN GENERAL.—Upon request by
23 the plan sponsor and approval by the Sec-
24 retary of the Treasury, a mortality table
25 which meets the requirements of clause (ii)

1 shall be used in determining any present
2 value or making any computation under
3 this section during the 10-consecutive plan
4 year period specified in the request. A
5 mortality table described in this clause
6 shall cease to be in effect if the plan actu-
7 ary determines at any time that such table
8 does not meet the requirements of clause
9 (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) there is a sufficient number
15 of plan participants, and the pension
16 plans have been maintained for a suf-
17 ficient period of time, to have credible
18 information necessary for purposes of
19 subclause (II),

20 “(II) such table reflects the ac-
21 tual experience of the pension plans
22 maintained by the sponsor and pro-
23 jected trends in general mortality ex-
24 perience,

1 “(III) except as provided by the
2 Secretary, such table will be used by
3 all plans maintained by the plan spon-
4 sor and all members of any controlled
5 group which includes the plan spon-
6 sor, and

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

10 “(iii) DEADLINE FOR DISPOSITION OF
11 APPLICATION.—Any mortality table sub-
12 mitted to the Secretary of the Treasury for
13 approval under this subparagraph shall be
14 treated as in effect for the first plan year
15 in the 10-year period described in clause
16 (i) unless the Secretary of the Treasury,
17 during the 180-day period beginning on
18 the date of such submission, disapproves of
19 such table and provides the reasons that
20 such table fails to meet the requirements
21 of clause (ii). The 180-day period shall be
22 extended for any period during which the
23 Secretary of the Treasury has requested
24 information from the plan sponsor and
25 such information has not been provided.

1 “(D) SEPARATE MORTALITY TABLES FOR
2 THE DISABLED.—Notwithstanding subpara-
3 graph (A)—

4 “(i) IN GENERAL.—The Secretary of
5 the Treasury shall establish mortality ta-
6 bles which may be used (in lieu of the ta-
7 bles under subparagraph (A)) under this
8 subsection for individuals who are entitled
9 to benefits under the plan on account of
10 disability. The Secretary of the Treasury
11 shall establish separate tables for individ-
12 uals whose disabilities occur in plan years
13 beginning before January 1, 1995, and for
14 individuals whose disabilities occur in plan
15 years beginning on or after such date.

16 “(ii) SPECIAL RULE FOR DISABILITIES
17 OCCURRING AFTER 1994.—In the case of
18 disabilities occurring in plan years begin-
19 ning after December 31, 1994, the tables
20 under clause (i) shall apply only with re-
21 spect to individuals described in such sub-
22 clause who are disabled within the meaning
23 of title II of the Social Security Act and
24 the regulations thereunder.

1 “(iii) PERIODIC REVISION.—The Sec-
2 retary of the Treasury shall (at least every
3 10 years) make revisions in any table in ef-
4 fect under clause (i) to reflect the actual
5 experience of pension plans and projected
6 trends in such experience.

7 “(E) TRANSITION RULE.—Under regula-
8 tions of the Secretary of the Treasury, any dif-
9 ference in present value resulting from any dif-
10 ferences in assumptions as set forth in the mor-
11 tality table specified in subparagraph (A) and
12 assumptions as set forth in the mortality table
13 described in section 302(d)(7)(C)(ii) (as in ef-
14 fect for plan years beginning in 2006) shall be
15 phased in ratably over the first period of 5 plan
16 years beginning in or after 2007 so as to be
17 fully effective for the fifth plan year.

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

23 “(A) the probability that future benefit
24 payments under the plan will be made in the
25 form of optional forms of benefits provided

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

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

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

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

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

20 “(i) the aggregate unfunded benefits
21 as of the close of the preceding plan year
22 (as determined under section
23 4006(a)(3)(E)(iii)) of such plan and all
24 other plans maintained by the contributing
25 sponsors (as defined in section

1 4001(a)(13)) and members of such spon-
2 sors' controlled groups (as defined in sec-
3 tion 4001(a)(14)) which are covered by
4 title IV (disregarding plans with no un-
5 funded benefits) exceed \$50,000,000; and

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

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

16 “(1) FUNDING TARGET FOR PLANS IN AT-RISK
17 STATUS.—

18 “(A) IN GENERAL.—In the case of a plan
19 to which this subsection applies for a plan year,
20 the funding target of the plan for the plan year
21 is equal to the present value of all liabilities to
22 participants and their beneficiaries under the
23 plan for the plan year, as determined by using
24 the additional actuarial assumptions described
25 in subparagraph (B).

1 “(B) ADDITIONAL ACTUARIAL ASSUMP-
2 TIONS.—The actuarial assumptions described in
3 this subparagraph are as follows:

4 “(i) All employees who are not other-
5 wise assumed to retire as of the valuation
6 date but who will be eligible to elect bene-
7 fits during the plan year and the 7 suc-
8 ceeding plan years shall be assumed to re-
9 tire at the earliest retirement date under
10 the plan but not before the end of the plan
11 year for which the at-risk target liability
12 and at-risk target normal cost are being
13 determined.

14 “(ii) All employees shall be assumed
15 to elect the retirement benefit available
16 under the plan at the assumed retirement
17 age (determined after application of clause
18 (i)) which would result in the highest
19 present value of liabilities.

20 “(2) TARGET NORMAL COST OF AT-RISK
21 PLANS.—In the case of a plan to which this sub-
22 section applies for a plan year, the target normal
23 cost of the plan for such plan year shall be equal to
24 the present value of all benefits which are expected
25 to accrue or be earned under the plan during the

1 plan year, determined using the additional actuarial
2 assumptions described in paragraph (1)(B).

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

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

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

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

11 For purposes of this subsection, a plan is in at-risk
12 status for a plan year if—

13 “(A) the plan is maintained by a finan-
14 cially-weak employer, and

15 “(B) the funding target attainment per-
16 centage for the plan year is less than 93 per-
17 cent.

18 “(5) FINANCIALLY-WEAK EMPLOYER.—

19 “(A) IN GENERAL.—For purposes of this
20 subsection, the term ‘financially-weak employer’
21 means any employer if—

22 “(i) as of the valuation date for each
23 of the years during a period of at least 3
24 consecutive plan years ending with the
25 plan year—

1 “(I) the employer has an out-
2 standing senior unsecured debt instru-
3 ment which is rated lower than invest-
4 ment grade by each of the nationally
5 recognized statistical rating organiza-
6 tions for corporate bonds that has
7 issued a credit rating for such instru-
8 ment, or

9 “(II) if no such debt instrument
10 has been rated by such an organiza-
11 tion but 1 or more of such organiza-
12 tions has made an issuer credit rating
13 for such employer, all such organiza-
14 tions which have so rated the em-
15 ployer have rated such employer lower
16 than investment grade, and

17 “(ii) at least 2 of the years during
18 such period are deterioration years.

19 If an employer is treated as a financially-weak
20 employer for any plan year, clause (ii) shall not
21 apply in determining whether the employer is so
22 treated for any succeeding plan year in any
23 continuous period of plan years for which the
24 employer is treated as a financially-weak em-
25 ployer.

1 “(B) CONTROLLED GROUP EXCEPTION.—

2 If an employer treated as a financially-weak
3 employer under subparagraph (A) is a member
4 of a controlled group (as defined in section
5 302(d)(3)), the employer shall not be treated as
6 a financially-weak employer if a significant
7 member (as determined under regulations pre-
8 scribed by the Secretary of the Treasury) of
9 such group has an outstanding senior unse-
10 cured debt instrument that is rated as being in-
11 vestment grade by an organization described in
12 subparagraph (A).

13 “(C) EMPLOYERS WITH NO RATINGS.—

14 If—

15 “(i) an employer has no debt instru-
16 ment described in subparagraph (A)(i)
17 which was rated by an organization de-
18 scribed in such subparagraph, and

19 “(ii) no such organization has made
20 an issuer credit rating for such employer,
21 then such employer shall only be treated as a
22 financially-weak employer to the extent provided
23 in regulations prescribed by the Secretary of
24 the Treasury.

1 “(6) DETERMINATION OF DETERIORATION
2 YEAR.—For purposes of paragraph (5), the term
3 ‘deterioration year’ means any year during the pe-
4 riod described in paragraph (5)(A)(i) for which the
5 rating described in subclause (I) or (II) of para-
6 graph (5)(A)(i) by each organization is either—

7 “(A) lower than the lowest rating of the
8 employer by such organization for a preceding
9 year in such period, or

10 “(B) the lowest rating used by such orga-
11 nization.

12 “(7) YEARS BEFORE EFFECTIVE DATE.—For
13 purposes of paragraphs (5) and (6), plan years be-
14 ginning before 2007 shall not be taken into account.

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

18 “(A) IN GENERAL.—In any case in which
19 a plan which is in at-risk status for a plan year
20 has been in such status for a consecutive period
21 of fewer than 5 plan years, the applicable
22 amount of the funding target and of the target
23 normal cost shall be, in lieu of the amount de-
24 termined without regard to this paragraph, the
25 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) IMPROVEMENT YEARS NOT TAKEN
11 INTO ACCOUNT.—

12 “(i) IN GENERAL.—An improvement
13 year shall not be taken into account in de-
14 termining any consecutive period of plan
15 years for purposes of subparagraph (A).

16 “(ii) APPLICATION OF SUBSECTION
17 AFTER IMPROVEMENT YEAR ENDS.—Plan
18 years immediately before and after an im-
19 provement year (or consecutive period of
20 improvement years) shall be treated as
21 consecutive for purposes of subparagraph
22 (A).

23 “(iii) IMPROVEMENT YEAR.—For pur-
24 poses of this subparagraph, the term ‘im-
25 provement year’ means any plan year for

1 which any rating described in subclause (I)
 2 or (II) of paragraph (5)(A)(i) is higher
 3 than such rating for the preceding plan
 4 year.

5 “(C) TRANSITION PERCENTAGE.—For pur-
 6 poses of subparagraph (A), the transition per-
 7 centage shall be determined in accordance with
 8 the following table:

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

9 “(D) YEARS BEFORE EFFECTIVE DATE.—
 10 For purposes of this paragraph, plan years be-
 11 ginning before 2007 shall not be taken into ac-
 12 count.

13 “(9) PLANS TO WHICH SUBSECTION APPLIES.—

14 “(A) IN GENERAL.—Except as provided in
 15 this paragraph, this subsection shall apply to
 16 any plan to which this section applies and
 17 which is in at-risk status for the plan year.

18 “(B) EXCEPTION FOR SMALL PLANS.—

19 This subsection shall not apply to a plan for a
 20 plan year if the plan was described in sub-
 21 section (g)(2)(B) for the preceding plan year,
 22 determined by substituting ‘500’ for ‘100’.

1 “(C) EXCEPTION FOR PLANS MAINTAINED
2 BY CERTAIN COOPERATIVES.—This subsection
3 shall not apply to an eligible cooperative plan
4 described in subparagraph (D).

5 “(D) ELIGIBLE COOPERATIVE PLAN DE-
6 FINED.—For purposes of subparagraph (C), a
7 plan shall be treated as an eligible cooperative
8 plan for a plan year if the plan is maintained
9 by more than 1 employer and at least 85 per-
10 cent of the employers are—

11 “(i) rural cooperatives (as defined in
12 section 401(k)(7)(B) of the Internal Rev-
13 enue Code of 1986 without regard to
14 clause (iv) thereof), or

15 “(ii) organizations which are—

16 “(I) cooperative organizations de-
17 scribed in section 1381(a) of such
18 Code which are more than 50-percent
19 owned by agricultural producers or by
20 cooperatives owned by agricultural
21 producers, or

22 “(II) more than 50-percent
23 owned, or controlled by, one or more
24 cooperative organizations described in
25 subclause (I).

1 A plan shall also be treated as an eligible coop-
2 erative plan for any plan year for which it is de-
3 scribed in section 210(a) and is maintained by
4 a rural telephone cooperative association de-
5 scribed in section 3(40)(B)(v).

6 “(E) EXCEPTION FOR PLANS SECURED BY
7 THIRD PARTIES BOUND BY PBGC AGREE-
8 MENTS.—This subsection shall not apply to any
9 plan if—

10 “(i) a person other than the employer
11 obligated to contribute under the plan is,
12 under the terms of an agreement with the
13 Pension Benefit Guaranty Corporation, lia-
14 ble for any failure of the employer to meet
15 its obligation to pay any minimum required
16 contribution or termination liability with
17 respect to the plan; and

18 “(ii) such person is not a financially-
19 weak employer under paragraph (5).

20 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
21 TIONS.—

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

1 “(2) INTEREST.—Any payment required under
2 paragraph (1) for a plan year made after the valu-
3 ation date for such plan year shall be increased by
4 interest for the period from the valuation date to the
5 payment date, determined by using the effective rate
6 of interest for the plan for such plan year.

7 “(3) ACCELERATED QUARTERLY CONTRIBUTION
8 SCHEDULE FOR UNDERFUNDED PLANS.—

9 “(A) FAILURE TO TIMELY MAKE RE-
10 QUIRED INSTALLMENT.—

11 “(i) IN GENERAL.—In the case of a
12 plan to which this paragraph applies, the
13 employer maintaining the plan shall make
14 the required installments under this para-
15 graph and if the employer fails to pay the
16 full amount of a required installment for
17 the plan year, then the amount of interest
18 charged under paragraph (2) on the under-
19 payment for the period of underpayment
20 shall be determined by using a rate of in-
21 terest equal to the rate otherwise used
22 under paragraph (2) plus 5 percentage
23 points.

24 “(ii) PLANS TO WHICH PARAGRAPH
25 APPLIES.—This paragraph applies to any

1 defined benefit plan to which this section
2 applies other than a plan which—

3 “(I) is a plan described in sub-
4 section (g)(2)(B)), or

5 “(II) had a funding shortfall of
6 \$1,000,000 or less for the preceding
7 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:

In the case of the following required in- stallment:	The due date is:
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—

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(C) PERIOD OF UNDERPAYMENT.—For
25 purposes of paragraph (3)(A), any portion of an

1 installment that is treated as not paid under
2 subparagraph (A) shall continue to be treated
3 as unpaid until the close of the quarter in
4 which the due date for such installment occurs.

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

15 “(E) DEFINITIONS.—For purposes of this
16 subparagraph:

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

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

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

3 “(ii) BASE AMOUNT.—

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

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

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

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

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

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

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

24 “(vi) QUARTER.—The term ‘quarter’
25 means, with respect to any required install-

1 ment, the 3-month period preceding the
2 month in which the due date for such in-
3 stallment occurs.

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

7 “(k) IMPOSITION OF LIEN WHERE FAILURE TO
8 MAKE REQUIRED CONTRIBUTIONS.—

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

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

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

21 then there shall be a lien in favor of the plan in the
22 amount determined under paragraph (3) upon all
23 property and rights to property, whether real or per-
24 sonal, belonging to such person and any other per-

1 son who is a member of the same controlled group
2 of which such person is a member.

3 “(2) PLANS TO WHICH SUBSECTION APPLIES.—

4 This subsection shall apply to a defined benefit plan
5 which is a single-employer plan covered under sec-
6 tion 4021 for any plan year for which the funding
7 target attainment percentage (as defined in sub-
8 section (d)(2)) of such plan is less than 100 percent.

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

15 “(4) NOTICE OF FAILURE; LIEN.—

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

21 “(B) PERIOD OF LIEN.—The lien imposed
22 by paragraph (1) shall arise on the due date for
23 the required contribution payment and shall
24 continue until the last day of the first plan year
25 in which the plan ceases to be described in

1 paragraph (1)(B). Such lien shall continue to
2 run without regard to whether such plan con-
3 tinues to be described in paragraph (2) during
4 the period referred to in the preceding sentence.

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

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

20 “(6) DEFINITIONS.—For purposes of this
21 subsection—

22 “(A) CONTRIBUTION PAYMENT.—The term
23 ‘contribution payment’ means, in connection
24 with a plan, a contribution payment required to
25 be made to the plan, including any required in-

1 stallment under paragraphs (3) and (4) of sub-
2 section (j).

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

10 “(C) CONTROLLED GROUP.—The term
11 ‘controlled group’ means any group treated as
12 a single employer under subsections (b), (c),
13 (m), and (o) of section 414 of the Internal Rev-
14 enue Code of 1986.

15 “(I) QUALIFIED TRANSFERS TO HEALTH BENEFIT
16 ACCOUNTS.—In the case of a qualified transfer (as de-
17 fined in section 420 of the Internal Revenue Code of
18 1986), any assets so transferred shall not, for purposes
19 of this section, be treated as assets in the plan.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 in section 1 of such Act (as amended by section 101) is
22 amended by inserting after the item relating to section
23 302 the following new item:

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

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to plan years begin-
3 ning after 2006.

4 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EM-**
5 **PLOYER PLANS.**

6 (a) LIMITS ON BENEFITS AND BENEFIT ACCRU-
7 ALS.—

8 (1) IN GENERAL.—Section 206 of such Act is
9 amended by adding at the end the following new
10 subsection:

11 “(g) FUNDING-BASED LIMITS ON BENEFITS AND
12 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER
13 PLANS.—

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

16 “(A) IN GENERAL.—Except as provided in
17 paragraph (4), no amendment to a single-em-
18 ployer plan which has the effect of increasing li-
19 abilities of the plan by reason of increases in
20 benefits, establishment of new benefits, chang-
21 ing the rate of benefit accrual, or changing the
22 rate at which benefits become nonforfeitable
23 may take effect during any plan year if the ad-
24 justed funding target attainment percentage as

1 of the valuation date of the plan for such plan
2 year is—

3 “(i) less than 80 percent, or

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

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

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

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

23 “(C) EXCEPTION FOR CERTAIN BENEFIT
24 INCREASES.—Subparagraph (A) shall not apply
25 to any amendment which provides for an in-

1 section 303(a)(1), is sufficient to result in
2 an adjusted funded target liability percent-
3 age for the plan year of 60 percent, and

4 “(ii) no prohibited payments will be
5 made during a prohibited period.

6 “(B) PROHIBITED PAYMENT.—For pur-
7 pose of this subsection—

8 “(i) IN GENERAL.—The term ‘prohib-
9 ited payment’ means—

10 “(I) any payment, in excess of
11 the monthly amount paid under a sin-
12 gle life annuity (plus any social secu-
13 rity supplements described in the last
14 sentence of section 204(b)(1)(G)), to
15 a participant or beneficiary whose an-
16 nuity starting date (as defined in sec-
17 tion 205(h)(2)) occurs during a pro-
18 hibited period,

19 “(II) any payment for the pur-
20 chase of an irrevocable commitment
21 from an insurer to pay benefits, and

22 “(III) any other payment speci-
23 fied by the Secretary of the Treasury
24 by regulations.

1 “(ii) EXCEPTION FOR CERTAIN PAY-
2 MENTS.—In the case of any prohibited pe-
3 riod described in subparagraph (C)(i), the
4 term ‘prohibited payment’ shall not include
5 any payment if the amount of the payment
6 does not exceed the lesser of—

7 “(I) 50 percent of the amount of
8 the payment which could be made
9 without regard to this subsection, or

10 “(II) the present value (deter-
11 mined under guidance prescribed by
12 the Pension Benefit Guaranty Cor-
13 poration, using the interest and mor-
14 tality assumptions under section
15 205(g)) of the maximum guarantee
16 with respect to the participant under
17 section 4022.

18 The exception under this clause shall only
19 apply once with respect to any participant,
20 except that, for purposes of this sentence,
21 a participant and any beneficiary on his
22 behalf (including an alternate payee, as de-
23 fined in section 206(d)(3)(K)) shall be
24 treated as 1 participant. If the accrued
25 benefit of a participant is allocated to such

1 an alternate payee and 1 or more other
2 persons, the amount under subclause (II)
3 shall be allocated among such persons in
4 the same manner as the accrued benefit is
5 allocated unless the qualified domestic rela-
6 tions order (as defined in section
7 206(d)(3)(B)(i)) provides otherwise.

8 “(C) PROHIBITED PERIOD.—For purposes
9 of subparagraph (A), the term ‘prohibited pe-
10 riod’ means—

11 “(i) except as provided in subpara-
12 graph (D), if a plan sponsor is required to
13 make the contribution for the current plan
14 year under subparagraph (A), the period
15 beginning on the 1st day of the plan year
16 and ending on the last day of the 1st pe-
17 riod of 2 consecutive plan years (beginning
18 on or after such 1st day) for which the
19 plan’s adjusted funded target liability per-
20 centage was at least 60 percent,

21 “(ii) any period the plan sponsor is in
22 bankruptcy, or

23 “(iii) any period during which the
24 plan has a liquidity shortfall (as defined in
25 section 303(j)(4)(E)(i)).

1 The prohibited period for purposes of clause (ii)
2 shall not include any portion of a plan year
3 (even if the plan sponsor is in bankruptcy dur-
4 ing such period) which occurs on or after the
5 date the plan's enrolled actuary certifies that,
6 as of the valuation date for the plan year, the
7 plan's adjusted funded target liability percent-
8 age is at least 100 percent.

9 “(D) SATISFACTION OF REQUIREMENT BE-
10 FORE CLOSE OF PLAN YEAR.—If, before the
11 close of the current plan year—

12 “(i) the plan sponsor makes the con-
13 tribution required to be made under sub-
14 paragraph (A), or

15 “(ii) the plan's enrolled actuary cer-
16 tifies that, as of the valuation date for the
17 plan year, the adjusted funded target li-
18 ability percentage of the plan is at least 60
19 percent,

20 this paragraph shall be applied as if no prohib-
21 ited period had begun as of the beginning of
22 such year and the plan shall, under rules de-
23 scribed by the Secretary of the Treasury, re-
24 store any payments not made during the pro-

1 hibited period in effect before the application of
2 this paragraph.

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

5 “(A) IN GENERAL.—Except as provided in
6 paragraph (4), a single-employer plan shall pro-
7 vide that all future benefit accruals under the
8 plan shall cease during a severe funding short-
9 fall period, but only to the extent the cessation
10 of such accruals would have been permitted
11 under section 204(g) if the cessation had been
12 implemented by a plan amendment adopted im-
13 mediately before the severe funding shortfall pe-
14 riod.

15 “(B) SEVERE FUNDING SHORTFALL PE-
16 RIOD.—For purposes of subparagraph (A), the
17 term ‘severe funding shortfall period’ means in
18 the case of a plan the adjusted funding target
19 attainment percentage of which as of the valu-
20 ation date of the plan for any plan year is less
21 than 60 percent, the period—

22 “(i) beginning on the 1st day of the
23 succeeding plan year, and

24 “(ii) ending on the date the plan’s en-
25 rolled actuary certifies that the plan’s ad-

1 justed funding target attainment percent-
2 age is at least 60 percent, and

3 “(C) OPPORTUNITY FOR INCREASED
4 FUNDING.—For purposes of subparagraph (B),
5 a plan shall not be treated as described in such
6 subparagraph for a plan year if the plan’s en-
7 rolled actuary certifies that the plan sponsor
8 has before the end of the plan year contributed
9 (in addition to any minimum required contribu-
10 tion under section 303) the amount sufficient to
11 result in an adjusted funding target attainment
12 percentage as of the valuation date for the plan
13 year of 60 percent.

14 “(4) EXCEPTION FOR CERTAIN COLLECTIVELY
15 BARGAINED BENEFITS.—In the case of a plan main-
16 tained pursuant to a collective bargaining agreement
17 between employee representatives and the plan spon-
18 sor and in effect before the beginning of the first
19 day on which a limitation would otherwise apply
20 under paragraph (1), (2), or (3)—

21 “(A) such limitations shall not apply to
22 any amendment, prohibited payment, or accrual
23 with respect to such plan, but

24 “(B) the plan sponsor shall contribute (in
25 addition to any minimum required contribution

1 under section 303) the amount sufficient to re-
2 sult in an adjusted funding target attainment
3 percentage (as of the valuation date for the
4 plan year in which any such limitation would
5 otherwise apply) equal to the percentage nec-
6 essary to prevent the limitation from applying.

7 “(5) RULES RELATING TO REQUIRED CON-
8 TRIBUTIONS.—

9 “(A) SECURITY MAY BE PROVIDED.—

10 “(i) IN GENERAL.—For purposes of
11 this subsection, the adjusted funding tar-
12 get attainment percentage shall be deter-
13 mined by treating as an asset of the plan
14 any security provided by a plan sponsor in
15 a form meeting the requirements of clause
16 (ii) .

17 “(ii) FORM OF SECURITY.—The secu-
18 rity required under clause (i) shall consist
19 of—

20 “(I) a bond issued by a corporate
21 surety company that is an acceptable
22 surety for purposes of section 412 of
23 this Act,

24 “(II) cash, or United States obli-
25 gations which mature in 3 years or

1 less, held in escrow by a bank or simi-
2 lar financial institution, or

3 “(III) such other form of security
4 as is satisfactory to the Secretary of
5 the Treasury and the parties involved.

6 “(iii) ENFORCEMENT.—Any security
7 provided under clause (i) may be perfected
8 and enforced at any time after the earlier
9 of—

10 “(I) the date on which the plan
11 terminates,

12 “(II) if there is a failure to make
13 a payment of the minimum required
14 contribution for any plan year begin-
15 ning after the security is provided, the
16 due date for the payment under sec-
17 tion 303(j), or

18 “(III) if the adjusted funding
19 target attainment percentage is less
20 than 60 percent for a consecutive pe-
21 riod of 7 years, the valuation date for
22 the last year in the period.

23 “(iv) RELEASE OF SECURITY.—The
24 security shall be released (and any
25 amounts thereunder shall be refunded to-

1 gether with any interest accrued thereon)
2 at such time as the Secretary of the Treas-
3 ury may prescribe in regulations, including
4 regulations for partial releases of the secu-
5 rity by reason of increases in the funding
6 target attainment percentage.

7 “(B) PREFUNDING BALANCE MAY NOT BE
8 USED.—No prefunding balance under section
9 303(f) may be used to satisfy any required con-
10 tribution under this subsection.

11 “(C) TREATMENT AS UNPAID MINIMUM
12 REQUIRED CONTRIBUTION.—The amount of any
13 required contribution which a plan sponsor fails
14 to make under paragraph (1) or (3) for any
15 plan year shall be treated as an unpaid min-
16 imum required contribution for purposes of sub-
17 section (j) and (k) of section 303 and for pur-
18 poses of section 4971 of the Internal Revenue
19 Code of 1986.

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

1 “(7) PRESUMED UNDERFUNDING FOR PUR-
2 POSES OF BENEFIT LIMITATIONS BASED ON PRIOR
3 YEAR’S FUNDING STATUS.—

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

19 “(B) PRESUMPTION OF UNDERFUNDING
20 AFTER 10TH MONTH.—In any case in which no
21 such certification is made with respect to the
22 plan before the first day of the 10th month of
23 the current plan year, for purposes of para-
24 graphs (1), (2), and (3), the plan’s adjusted
25 funding target attainment percentage shall be

1 conclusively presumed to be less than 60 per-
2 cent as of the first day of such 10th month.

3 “(8) TREATMENT OF PLAN AS OF CLOSE OF
4 PROHIBITED OR CESSATION PERIOD.—For purposes
5 of applying this part—

6 “(A) OPERATION OF PLAN AFTER PE-
7 RIOD.—Unless the plan provides otherwise, pay-
8 ments and accruals will resume effective as of
9 the day following the close of a period of limita-
10 tion of payment or accrual of benefits under
11 paragraph (2) or (3).

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

17 “(9) FUNDING TARGET ATTAINMENT PERCENT-
18 AGE.—For purposes of this subsection—

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

22 “(B) ADJUSTED FUNDED TARGET LIABIL-
23 ITY PERCENTAGE.—The term ‘adjusted funded
24 target liability percentage’ means the funded
25 target liability percentage which is determined

1 under subparagraph (A) by increasing each of
2 the amounts under subparagraphs (A) and (B)
3 of section 303(d)(2) by the aggregate amount
4 of purchases of annuities, payments of single
5 sums, and such other disbursements as the Sec-
6 retary of the Treasury shall prescribe in regula-
7 tions, which were made by the plan during the
8 preceding 2 plan years.

9 “(10) YEARS BEFORE EFFECTIVE DATE.—No
10 plan year beginning before 2007 shall be taken into
11 account in determining whether this subsection ap-
12 plies to any plan year beginning after 2006.”.

13 (2) NOTICE REQUIREMENT.—

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

16 (i) by redesignating subsection (j) as
17 subsection (k); and

18 (ii) by inserting after subsection (i)
19 the following new subsection:

20 “(j) NOTICE OF FUNDING-BASED LIMITATION ON
21 CERTAIN FORMS OF DISTRIBUTION.—The plan adminis-
22 trator of a single-employer plan shall provide a written no-
23 tice to plan participants and beneficiaries within 30
24 days—

1 “(1) after the plan has become subject to the
2 restriction described in section 206(g)(2),

3 “(2) in the case of a plan to which section
4 206(g)(3) applies, after—

5 “(A) the date in the plan year described in
6 section 206(g)(3)(B) on which the plan’s en-
7 rolled actuary certifies that the plan’s adjusted
8 funding target attainment percentage for the
9 plan year is less than 60 percent (or, if earlier,
10 the date such percentage is deemed to be less
11 than 60 percent under section 206(g)(7)), and

12 “(B) the first day of the severe funding
13 shortfall period, and

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

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

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

24 (b) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to plan years beginning after
3 December 31, 2006.

4 (2) COLLECTIVE BARGAINING EXCEPTION.—In
5 the case of a plan maintained pursuant to 1 or more
6 collective bargaining agreements between employee
7 representatives and 1 or more employers ratified be-
8 fore January 1, 2007, the amendments made by this
9 section shall not apply to plan years beginning be-
10 fore the earlier of—

11 (A) the later of—

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

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

22 (B) January 1, 2010.

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

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

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

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

8 (1) in section 101(d)(3), by striking “section
9 302(e)” and inserting “section 303(j)”;

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

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

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

18 “(A) in the case of a single-employer plan,
19 the funding target (as defined in section
20 303(d)(1)) of the plan, or

21 “(B) in the case of a multiemployer plan,
22 the current liability (as defined in section
23 304(c)(6)(D)) under the plan,

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

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

3 (5) in section 204(g)(1), by striking “section
4 302(c)(8)” and inserting “section 302(d)(2)”;

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

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

12 (8) in section 204(i)(4), by striking “section
13 302(c)(11)(A), without regard to section
14 302(c)(11)(B)” and inserting “section 302(b)(1),
15 without regard to section 302(b)(2)”;

16 (9) in section 206(e)(1), by striking “section
17 302(d)” and inserting “section 303(j)(4)”, and by
18 striking “section 302(e)(5)” and inserting “section
19 303(j)(4)(E)(i)”;

20 (10) in section 206(e)(3), by striking “section
21 302(e) by reason of paragraph (5)(A) thereof” and
22 inserting “section 303(j)(3) by reason of section
23 303(j)(4)(A)”;

24 (11) in sections 101(e)(3), 403(c)(1), and
25 408(b)(13), by striking “American Jobs Creation

1 Act of 2004” and inserting “Pension Security and
2 Transparency Act of 2005”.

3 (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—

4 Title IV of such Act is amended—

5 (1) in section 4001(a)(13) (29 U.S.C.
6 1301(a)(13)), by striking “302(c)(11)(A)” and in-
7 serting “302(b)(1)”, by striking “412(c)(11)(A)”
8 and inserting “412(c)(1)”, by striking
9 “302(c)(11)(B)” and inserting “302(b)(2)”, and by
10 striking “412(c)(11)(B)” and inserting “412(c)(2)”;

11 (2) in section 4003(e)(1) (29 U.S.C.
12 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and
13 inserting “303(k)(1)(A) and (B)”, and by striking
14 “412(n)(1)(A) and (B)” and inserting
15 “430(k)(1)(A) and (B)”;

16 (3) in section 4010(b)(2) (29 U.S.C.
17 1310(b)(2)), by striking “302(f)(1)(A) and (B)” and
18 inserting “303(k)(1)(A) and (B)”, and by striking
19 “412(n)(1)(A) and (B)” and inserting
20 “430(k)(1)(A) and (B)”;

21 (4) in section 4062(c)(1) (29 U.S.C.
22 1362(c)(1)), by striking paragraphs (1), (2), and (3)
23 and inserting the following:

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

1 the meaning of section 303(c)(1) of this Act and
2 430(d)(1) 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 shortfall amortization installments (if
6 any) determined for succeeding plan years under
7 section 303(c)(2) of this Act and section 430(d)(2)
8 of such Code (which, for purposes of this subpara-
9 graph, shall include any increase in such sum which
10 would result if all applications for waivers of the
11 minimum funding standard under section 302(e) of
12 this Act and section 412(d) of such Code which are
13 pending with respect to such plan were denied and
14 if no additional contributions (other than those al-
15 ready made by the termination date) were made for
16 the plan year in which the termination date occurs
17 or for any previous plan year), or

18 “(B) in the case of a multiemployer plan, the
19 outstanding balance of the accumulated funding de-
20 ficiencies (within the meaning of section 304(a)(2)
21 of this Act and section 431(a) of the Internal Rev-
22 enue Code of 1986) of the plan (if any) (which, for
23 purposes of this subparagraph, shall include the
24 amount of any increase in such accumulated funding
25 deficiencies of the plan which would result if all

1 pending applications for waivers of the minimum
2 funding standard under section 302(c) of this Act or
3 section 412(d) of such Code and for extensions of
4 the amortization period under section 304(d) of this
5 Act or section 431(d) of such Code with respect to
6 such plan were denied and if no additional contribu-
7 tions (other than those already made by the termi-
8 nation date) were made for the plan year in which
9 the termination date occurs or for any previous plan
10 year),

11 “(2)(A) in the case of a single-employer plan,
12 the sum of the waiver amortization charge (within
13 the meaning of section 303(e)(1) of this Act and
14 430(e)(2) of the Internal Revenue Code of 1986)
15 with respect to the plan (if any) for the plan year
16 in which the termination date occurs, plus the aggre-
17 gate total of waiver amortization installments (if
18 any) determined for succeeding plan years under
19 section 303(e)(3) of this Act and section 430(e)(3)
20 of such Code, or

21 “(B) in the case of a multiemployer plan, the
22 outstanding balance of the amount of waived fund-
23 ing deficiencies of the plan waived before such date
24 under section 302(c) of this Act or section 412(d) of
25 such Code (if any), and

1 “(3) in the case of a multiemployer plan, the
2 outstanding balance of the amount of decreases in
3 the minimum funding standard allowed before such
4 date under section 304(d) of this Act or section
5 431(d) of such Code (if any);”;

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

8 (6) in section 4243(a)(1)(B) (29 U.S.C.
9 1423(a)(1)(B)), by striking “302(a)” and inserting
10 “304(a)”, and, in clause (i), by striking “302(a)”
11 and inserting “304(a)”;

12 (7) in section 4243(f)(1) (29 U.S.C.
13 1423(f)(1)), by striking “303(a)” and inserting
14 “302(e)”;

15 (8) in section 4243(f)(2) (29 U.S.C.
16 1423(f)(2)), by striking “303(c)” and inserting
17 “302(e)(3)”;

18 (9) in section 4243(g) (29 U.S.C. 1423(g)), by
19 striking “302(e)(3)” and inserting “304(e)(3)”.

20 (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4
21 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.
22 4 of 1978 (ratified and affirmed as law by Public Law
23 98–532 (98 Stat. 2705)) is amended by striking
24 “302(e)(8)” and inserting “302(d)(2)”, by striking
25 “304(a) and (b)(2)(A)” and inserting “304(d)(1), (d)(2),

1 and (e)(2)(A)”, and by striking “412(c)(8), (e), and
2 (f)(2)(A)” and inserting “412(d)(2) and 431(d)(1), (d)(2),
3 and (e)(2)(A)”.

4 (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-
5 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.
6 1057) is repealed.

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

9 **SEC. 105. SPECIAL RULES FOR MULTIPLE EMPLOYER**
10 **PLANS OF CERTAIN COOPERATIVES.**

11 (a) GENERAL RULE.—Except as provided in this sec-
12 tion, if a plan in existence on July 26, 2005, was an eligi-
13 ble cooperative plan for its plan year which includes such
14 date, the amendments made by section 401 of this Act,
15 this subtitle, and subtitle B shall not apply to plan years
16 beginning before the earlier of—

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

19 (2) January 1, 2017.

20 (b) INTEREST RATE.—In applying section
21 302(b)(5)(B) of the Employee Retirement Income Secu-
22 rity Act of 1974 and section 412(b)(5)(B) of the Internal
23 Revenue Code of 1986 (as in effect before the amendments
24 made by this subtitle and subtitle B) and in applying sec-
25 tion 4006(a)(3)(E)(iii) of such Act (as in effect before the

1 amendments made by section 401) to an eligible coopera-
2 tive plan for plan years beginning after December 31,
3 2006, and before the first plan year to which such amend-
4 ments apply, the third segment rate determined under sec-
5 tion 303(h)(2)(C)(iii) of such Act and section
6 430(h)(2)(C)(iii) of such Code (as added by such amend-
7 ments) shall be used in lieu of the interest rate otherwise
8 used.

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

14 (1) rural cooperatives (as defined in section
15 401(k)(7)(B) of such Code without regard to clause
16 (iv) thereof), or

17 (2) organizations which are—

18 (A) cooperative organizations described in
19 section 1381(a) of such Code which are more
20 than 50-percent owned by agricultural pro-
21 ducers or by cooperatives owned by agricultural
22 producers, or

23 (B) more than 50-percent owned, or con-
24 trolled by, one or more cooperative organiza-
25 tions described in subparagraph (A).

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

6 **SEC. 106. TEMPORARY RELIEF FOR CERTAIN RESCUED**
7 **PLANS.**

8 (a) GENERAL RULE.—Except as provided in this sec-
9 tion, if a plan in existence on July 26, 2005, was a rescued
10 plan as of such date, the amendments made by section
11 401 of this Act, this subtitle, and subtitle B shall not
12 apply to plan years beginning before January 1, 2014.

13 (b) INTEREST RATE.—In applying section
14 302(b)(5)(B) of the Employee Retirement Income Secu-
15 rity Act of 1974 and section 412(b)(5)(B) of the Internal
16 Revenue Code of 1986 (as in effect before the amendments
17 made by this subtitle and subtitle B), and in applying sec-
18 tion 4006(a)(3)(E)(iii) of such Act (as in effect before the
19 amendments made by section 401), to a rescued plan for
20 plan years beginning after December 31, 2006, and before
21 January 1, 2014, the third segment rate determined under
22 section 303(h)(2)(C)(iii) of such Act and section
23 430(h)(2)(C)(iii) of such Code (as added by such amend-
24 ments) shall be used in lieu of the interest rate otherwise
25 used.

1 (c) RESCUED PLAN.—For purposes of this section,
2 the term “rescued plan” means a defined benefit plan
3 (other than a multiemployer plan) to which section 302
4 of such Act and section 412 of such Code apply and—

5 (1) which was sponsored by an employer which
6 was in bankruptcy, giving rise to a claim by the
7 Pension Benefit Guaranty Corporation of at least
8 \$100,000,000, but not greater than \$150,000,000,
9 and

10 (2) the sponsorship of which was assumed by
11 another employer that was not a member of the
12 same controlled group as the bankrupt sponsor and
13 the claim of the Pension Benefit Guaranty Corpora-
14 tion was settled or withdrawn in connection with the
15 assumption of the sponsorship.

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

18 **SEC. 111. MODIFICATIONS OF THE MINIMUM FUNDING**
19 **STANDARDS.**

20 (a) IN GENERAL.—Section 412 of the Internal Rev-
21 enue Code of 1986 (relating to minimum funding stand-
22 ards) is amended to read as follows:

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

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

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

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

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

15 “(B) in the case of a money purchase pen-
16 sion plan which is a single-employer plan, the
17 employer makes contributions to or under the
18 plan for the plan year which are required under
19 the terms of the plan, and

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

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

3 “(b) PLANS TO WHICH SECTION APPLIES.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3), this section applies to a plan if,
6 for any plan year beginning on or after the effective
7 date of this section for such plan under the Em-
8 ployee Retirement Income Security Act of 1974—

9 “(A) the plan included a trust which quali-
10 fied (or was determined by the Secretary to
11 have qualified) under section 401(a), or

12 “(B) the plan satisfied (or was determined
13 by the Secretary to have satisfied) the require-
14 ments of section 403(a).

15 “(2) EXCEPTIONS.—This section shall not
16 apply to—

17 “(A) any profit-sharing or stock bonus
18 plan,

19 “(B) any insurance contract plan described
20 in subsection (g)(3),

21 “(C) any governmental plan (within the
22 meaning of section 414(d)),

23 “(D) any church plan (within the meaning
24 of section 414(e)) with respect to which the

1 election provided by section 410(d) has not been
2 made,

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

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

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

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

23 “(c) LIABILITY FOR CONTRIBUTIONS.—

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

1 by this section and any required installments under
2 section 430(j) shall be paid by any employer respon-
3 sible for making the contribution to or under the
4 plan.

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

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

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

15 “(A) IN GENERAL.—If—

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

1 with the amount of the waived funding de-
2 ficiency and such amount shall be amor-
3 tized as required under section
4 431(b)(2)(C).

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

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

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

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

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

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

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

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

13 “(A) SECURITY MAY BE REQUIRED.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in subparagraph (C), the Secretary
16 may require an employer maintaining a de-
17 fined benefit plan which is a single-em-
18 ployer plan (within the meaning of section
19 4001(a)(15) of the Employee Retirement
20 Income Security Act of 1974) to provide
21 security to such plan as a condition for
22 granting or modifying a waiver under
23 paragraph (1).

24 “(ii) SPECIAL RULES.—Any security
25 provided under clause (i) may be perfected

1 and enforced only by the Pension Benefit
2 Guaranty Corporation, or, at the direction
3 of the Corporation, by a contributing spon-
4 sor (within the meaning of section
5 4001(a)(13) of such Act) or a member of
6 such sponsor's controlled group (within the
7 meaning of section 4001(a)(14) of such
8 Act).

9 “(B) CONSULTATION WITH THE PENSION
10 BENEFIT GUARANTY CORPORATION.—Except as
11 provided in subparagraph (C), the Secretary
12 shall, before granting or modifying a waiver
13 under this subsection with respect to a plan de-
14 scribed in subparagraph (A)(i)—

15 “(i) provide the Pension Benefit
16 Guaranty Corporation with—

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

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

23 “(ii) consider—

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

1 “(II) any views of any employee
2 organization (within the meaning of
3 section 3(4) of such Act) representing
4 participants in the plan which are
5 submitted in writing to the Secretary
6 of the Treasury in connection with
7 such application.

8 Information provided to the Corporation under
9 this subparagraph shall be considered tax re-
10 turn information and subject to the safe-
11 guarding and reporting requirements of section
12 6103(p).

13 “(C) EXCEPTION FOR CERTAIN WAIV-
14 ERS.—

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

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

23 “(II) the present value of all
24 waiver amortization installments de-
25 termined for the plan year and suc-

1 year shall be allocated first to unpaid
2 minimum required contributions for
3 all preceding plan years on a first-in,
4 first-out basis and then to the min-
5 imum required contribution under sec-
6 tion 430 for the plan year.

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

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

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

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

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

14 “(6) ADVANCE NOTICE.—

15 “(A) IN GENERAL.—The Secretary shall,
16 before granting a waiver under this subsection,
17 require each applicant to provide evidence satis-
18 factory to such Secretary that the applicant has
19 provided notice of the filing of the application
20 for such waiver to each affected party (as de-
21 fined in section 4001(a)(21) of the Employee
22 Retirement Income Security Act of 1974) other
23 than the Pension Benefit Guaranty Corporation
24 and in the case of a multiemployer plan, to each
25 employer required to contribute to the plan

1 under subsection (b)(1). Such notice shall in-
2 clude a description of the extent to which the
3 plan is funded for benefits which are guaran-
4 teed under title IV of such Act and for benefit
5 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 (e)(2) has been made at any time in
22 the preceding 24 months. If a plan is amended
23 in violation of the preceding sentence, any such
24 waiver, or extension of time, shall not apply to

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

3 “(B) EXCEPTION.—Subparagraph (A)
4 shall 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 (e)(2), or

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

15 “(e) MISCELLANEOUS RULES.—For purposes of this
16 section—

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

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

24 “(A) is adopted after the close of such plan
25 year but no later than 2½ months after the

1 close of the plan year (or, in the case of a mul-
2 tiemployer plan, no later than 2 years after the
3 close of such plan year),

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

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

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

1 (d)(2)) or a substantial business hardship (as so de-
2 termined) in the case of a multiemployer plan and
3 that a waiver under subsection (d)(1) (or in the case
4 of a multiemployer plan, any extension of the amor-
5 tization period under section 431(d)) is unavailable
6 or inadequate.

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

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

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

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

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

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

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

10 A plan funded exclusively by the purchase of group
11 insurance contracts which are determined under reg-
12 ulations prescribed by the Secretary to have the
13 same characteristics as contracts described in the
14 preceding sentence shall be treated as a plan de-
15 scribed in this paragraph.

16 “(4) CONTROLLED GROUP.—For purposes of
17 this section and section 430, the term ‘controlled
18 group’ means any group treated as a single employer
19 under subsection (b), (c), (m), or (o) of section
20 414.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to plan years beginning after De-
23 cember 31, 2006.

1 **SEC. 112. FUNDING RULES APPLICABLE TO SINGLE-EM-**
2 **PLOYER PENSION PLANS.**

3 Subchapter D of chapter 1 of the Internal Revenue
4 Code of 1986 (relating to deferred compensation, etc.) is
5 amended by adding at the end the following new part:

6 **“PART III—RULES RELATING TO MINIMUM**
7 **FUNDING STANDARDS AND BENEFIT LIMITATION**

“430. Minimum funding standards for single-employer defined benefit plans.

“431. Minimum funding standards for multiemployer plans.

8 **“SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-**
9 **EMPLOYER DEFINED BENEFIT PLANS.**

10 “(a) **MINIMUM REQUIRED CONTRIBUTION.**—For
11 purposes of this section and section 412(a)(2)(A), except
12 as provided in subsection (f), the term ‘minimum required
13 contribution’ means, with respect to any plan year of a
14 defined benefit plan which is a single employer plan—

15 “(1) in any case in which the value of plan as-
16 sets of the plan (as reduced under subsection (f)(4))
17 is less than the funding target of the plan for the
18 plan year, the sum of—

19 “(A) the target normal cost of the plan for
20 the plan year,

21 “(B) the shortfall amortization charge (if
22 any) for the plan for the plan year determined
23 under subsection (c), and

1 “(C) the waiver amortization charge (if
2 any) for the plan for the plan year as deter-
3 mined under subsection (e); or

4 “(2) in any case in which the value of plan as-
5 sets of the plan (as reduced under subsection (f)(4))
6 equals or exceeds the funding target of the plan for
7 the plan year, the target normal cost of the plan for
8 the plan year reduced (but not below zero) by any
9 such excess.

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

21 “(c) SHORTFALL AMORTIZATION CHARGE.—

22 “(1) IN GENERAL.—For purposes of this sec-
23 tion, the shortfall amortization charge for a plan for
24 any plan year is the aggregate total of the shortfall
25 amortization installments for such plan year with re-

1 spect to the shortfall amortization bases for such
2 plan year and each of the 6 preceding plan years.

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

5 “(A) DETERMINATION.—The shortfall am-
6 ortization installments are the amounts nec-
7 essary to amortize the shortfall amortization
8 base of the plan for any plan year in level an-
9 nual installments over the 7-plan-year period
10 beginning with such plan year.

11 “(B) SHORTFALL INSTALLMENT.—The
12 shortfall amortization installment for any plan
13 year in the 7-plan-year period under subpara-
14 graph (A) with respect to any shortfall amorti-
15 zation base is the annual installment deter-
16 mined under subparagraph (A) for that year for
17 that base.

18 “(C) SEGMENT RATES.—In determining
19 any shortfall amortization installment under
20 this paragraph, the plan sponsor shall use the
21 segment rates determined under subparagraph
22 (C) of subsection (h)(2), applied under rules
23 similar to the rules of subparagraph (B) of sub-
24 section (h)(2).

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

5 “(A) the funding shortfall of such plan for
6 such plan year, over

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

19 “(4) FUNDING SHORTFALL.—

20 “(A) IN GENERAL.—For purposes of this
21 section, except as provided in subparagraph
22 (B), the funding shortfall of a plan for any plan
23 year is the excess (if any) of—

24 “(i) the funding target of the plan for
25 the plan year, over

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

5 “(B) TRANSITION RULE FOR AMORTIZA-
6 TION OF FUNDING SHORTFALL.—

7 “(i) IN GENERAL.—Solely for pur-
8 poses of applying paragraph (3) in the case
9 of plan years beginning after 2006 and be-
10 fore 2011, only the applicable percentage
11 of the funding target shall be taken into
12 account under paragraph (3)(A) in deter-
13 mining the funding shortfall for the plan
14 year.

15 “(ii) APPLICABLE PERCENTAGE.—For
16 purposes of subparagraph (A)—

17 “(I) IN GENERAL.—Except as
18 provided in subclause (II), the appli-
19 cable percentage shall be 93 percent
20 for plan years beginning in 2007, 96
21 percent for plan years beginning in
22 2008, and 100 percent for any suc-
23 ceeding plan year.

24 “(II) SMALL PLANS.—In the case
25 of a plan described in subsection

1 (g)(2)(B), the applicable percentage
 2 shall be determined in accordance
 3 with the following table:

“In the case of a plan year beginning in calendar year:	The applicable percentage is—
2007	92
2008	94
2009	96
2010	98.

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

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

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

20 “(2) FUNDING TARGET ATTAINMENT PERCENT-
 21 AGE.—The ‘funding target attainment percentage’ of

1 a plan for a plan year is the ratio (expressed as a
2 percentage) which—

3 “(A) the value of plan assets for the plan
4 year, bears to

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

8 “(e) WAIVER AMORTIZATION CHARGE.—

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

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

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

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

1 respect to any waiver amortization base is the
2 annual installment determined under subpara-
3 graph (A) for that year for that base.

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

10 “(4) WAIVER AMORTIZATION BASE.—The waiv-
11 er amortization base of a plan for a plan year is the
12 amount of the waived funding deficiency (if any) for
13 such plan year under section 412(d).

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

23 “(f) USE OF PREFUNDING BALANCES TO SATISFY
24 MINIMUM REQUIRED CONTRIBUTIONS.—

1 “(1) IN GENERAL.—A plan sponsor may credit
2 any amount of a plan’s prefunding balance for a
3 plan year against the minimum required contribu-
4 tion for the plan year and the amount of the con-
5 tributions an employer is required to make under
6 section 412(c) for the plan year shall be reduced by
7 the amount so credited. Any such amount shall be
8 credited on the first day of the plan year.

9 “(2) PREFUNDING BALANCE.—

10 “(A) BEGINNING BALANCE.—The begin-
11 ning balance of a prefunding balance main-
12 tained by a plan shall be zero, except that if a
13 plan was in effect for a plan year beginning in
14 2006 and had a positive balance in the funding
15 standard account under section 412(b) (as in
16 effect for such plan year) as of the end of such
17 plan year, the beginning balance for the plan
18 for its first plan year beginning after 2006 shall
19 be such positive balance.

20 “(B) INCREASES.—

21 “(i) IN GENERAL.—As of the first day
22 of each plan year beginning after 2007, the
23 prefunding balance of a plan shall be in-
24 creased by the excess (if any) of—

1 “(I) the aggregate amount of em-
2 ployer contributions to the plan for
3 the preceding plan year, over

4 “(II) the minimum required con-
5 tribution for the preceding plan year.

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

17 “(iii) CERTAIN CONTRIBUTIONS DIS-
18 REGARDED.—Any contribution which is re-
19 quired to be made under section 436 in ad-
20 dition to any contribution required under
21 this section shall not be taken into account
22 for purposes of clause (i).

23 “(C) DECREASES.—As of the first day of
24 each plan year after 2007, the prefunding bal-
25 ance of a plan shall be decreased (but not below

1 zero) by the amount of the balance credited
2 under paragraph (1) against the minimum re-
3 quired contribution of the plan for the pre-
4 ceding plan year.

5 “(D) ADJUSTMENTS FOR INVESTMENT EX-
6 PERIENCE.—In determining the prefunding bal-
7 ance of a plan as of the first day of the plan
8 year, the plan sponsor shall, in accordance with
9 regulations prescribed by the Secretary, adjust
10 such balance to reflect the rate of return on
11 plan assets for the preceding plan year. Not-
12 withstanding subsection (g)(3), such rate of re-
13 turn shall be determined on the basis of fair
14 market value and shall properly take into ac-
15 count, in accordance with such regulations, all
16 contributions, distributions, and other plan pay-
17 ments made during such period.

18 “(3) LIMITATION FOR UNDERFUNDED PLANS.—

19 “(A) IN GENERAL.—If the ratio (expressed
20 as a percentage) for any plan year which—

21 “(i) the value of plan assets for the
22 preceding plan year, bears to

23 “(ii) the funding target of the plan for
24 the preceding plan year (determined with-
25 out regard to subsection (i)(1)),

1 is less than 80 percent, the preceding provisions
2 of this subsection shall not apply unless employ-
3 ers liable for contributions to the plan under
4 section 412(c) make contributions to the plan
5 for the plan year in an aggregate amount not
6 less than the amount determined under sub-
7 paragraph (B). Any contribution required by
8 this subparagraph may not be reduced by any
9 credit otherwise allowable under paragraph (1).

10 “(B) APPLICABLE AMOUNT.—The amount
11 determined under this subparagraph for any
12 plan year is the greater of—

13 “(i) the target normal cost of the plan
14 for the plan year, or

15 “(ii) 25 percent of the minimum re-
16 quired contribution under subsection (a)
17 for the plan year without regard to this
18 subsection.

19 “(4) REDUCTION IN VALUE OF ASSETS.—Solely
20 for purposes of applying subsections (a) and
21 (c)(4)(A)(ii) in determining the minimum required
22 contribution under this section, the value of the plan
23 assets otherwise determined without regard to this
24 paragraph shall be reduced by the amount of the
25 prefunding balance under this subsection.

1 “(g) VALUATION OF PLAN ASSETS AND LIABIL-
2 ITIES.—

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

8 “(2) VALUATION DATE.—For purposes of this
9 section—

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

14 “(B) EXCEPTION FOR SMALL PLANS.—If,
15 on each day during the preceding plan year, a
16 plan had 100 or fewer participants, the plan
17 may designate any day during the plan year as
18 its valuation date for such plan year and suc-
19 ceeding plan years. For purposes of this sub-
20 paragraph, all defined benefit plans (other than
21 multiemployer plans) maintained by the same
22 employer (or any member of such employer’s
23 controlled group) shall be treated as 1 plan, but
24 only employees of such employer or member
25 shall be taken into account.

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

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

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

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

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

20 “(B) AVERAGING ALLOWED.—A plan may
21 determine the value of plan assets on the basis
22 of any reasonable actuarial method of valuation
23 providing for the averaging of fair market val-
24 ues, but only if such method—

1 “(i) is permitted under regulations
2 prescribed by the Secretary, and

3 “(ii) does not provide for averaging of
4 such values over more than the period be-
5 ginning on the last day of the 12th month
6 preceding the valuation date and ending on
7 the valuation date (or a similar period in
8 the case of a valuation date which is not
9 the 1st day of a month).

10 “(4) ACCOUNTING FOR CONTRIBUTION RE-
11 CEIPTS.—For purposes of determining the value of
12 assets under paragraph (3)—

13 “(A) PRIOR YEAR CONTRIBUTIONS.—If—

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

18 “(ii) the contribution is for a pre-
19 ceding plan year,

20 the contribution shall be taken into account as
21 an asset of the plan as of the valuation date,
22 except that in the case of any plan year begin-
23 ning after 2007, only the present value (deter-
24 mined as of the valuation date) of such con-
25 tribution may be taken into account. For pur-

1 poses of the preceding sentence, present value
2 shall be determined using the effective interest
3 rate for the preceding plan year to which the
4 contribution is properly allocable.

5 “(B) SPECIAL RULE FOR CURRENT YEAR
6 CONTRIBUTIONS MADE BEFORE VALUATION
7 DATE.—If any contributions for any plan year
8 are made to or under the plan during the plan
9 year but before the valuation date for the plan
10 year, the assets of the plan as of the valuation
11 date shall not include—

12 “(i) such contributions, and

13 “(ii) interest on such contributions for
14 the period between the date of the con-
15 tributions and the valuation date, deter-
16 mined by using the effective interest rate
17 for the plan year.

18 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

23 “(A) each of which is reasonable (taking
24 into account the experience of the plan and rea-
25 sonable expectations), and

1 “(B) which, in combination, offer the actu-
2 ary’s best estimate of anticipated experience
3 under the plan.

4 “(2) INTEREST RATES.—

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

14 “(B) INTEREST RATES FOR DETERMINING
15 FUNDING TARGET.—For purposes of deter-
16 mining the funding target of a plan for any
17 plan year, the interest rate used in determining
18 the present value of the benefits of the plan
19 shall be—

20 “(i) in the case of benefits reasonably
21 determined to be payable during the 5-year
22 period beginning on the first day of the
23 plan year, the first segment rate with re-
24 spect to the applicable month,

1 “(ii) in the case of benefits reasonably
2 determined to be payable during the 15-
3 year period beginning at the end of the pe-
4 riod described in clause (i), the second seg-
5 ment rate with respect to the applicable
6 month, and

7 “(iii) in the case of benefits reason-
8 ably determined to be payable after the pe-
9 riod described in clause (ii), the third seg-
10 ment rate with respect to the applicable
11 month.

12 “(C) SEGMENT RATES.—For purposes of
13 this paragraph—

14 “(i) FIRST SEGMENT RATE.—The
15 term ‘first segment rate’ means, with re-
16 spect to any month, the single rate of in-
17 terest which shall be determined by the
18 Secretary for such month on the basis of
19 the corporate bond yield curve for such
20 month, taking into account only that por-
21 tion of such yield curve which is based on
22 bonds maturing during the 5-year period
23 commencing with such month.

24 “(ii) SECOND SEGMENT RATE.—The
25 term ‘second segment rate’ means, with re-

1 spect to any month, the single rate of in-
2 terest which shall be determined by the
3 Secretary for such month on the basis of
4 the corporate bond yield curve for such
5 month, taking into account only that por-
6 tion of such yield curve which is based on
7 bonds maturing during each of the years in
8 the 15-year period beginning at the end of
9 the period described in clause (i).

10 “(iii) THIRD SEGMENT RATE.—The
11 term ‘third segment rate’ means, with re-
12 spect to any month, the single rate of in-
13 terest which shall be determined by the
14 Secretary for such month on the basis of
15 the corporate bond yield curve for such
16 month, taking into account only that por-
17 tion of such yield curve which is based on
18 bonds maturing during periods beginning
19 after the period described in clause (ii).

20 “(D) CORPORATE BOND YIELD CURVE.—
21 The term ‘corporate bond yield curve’ means,
22 with respect to any month, a yield curve which
23 is prescribed by the Secretary for such month
24 and which reflects the average, for the 12-
25 month period ending with the month preceding

1 such month, of yields on investment grade cor-
2 porate bonds with varying maturities.

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

14 “(F) PUBLICATION REQUIREMENTS.—The
15 Secretary shall publish for each month the cor-
16 porate bond yield curve for such month and
17 each of the rates determined under this para-
18 graph for such month. The Secretary shall also
19 publish a description of the methodology used
20 to determine such yield curve and such rates
21 which is sufficiently detailed to enable plans to
22 make reasonable projections regarding the yield
23 curve and such rates for future months based
24 on the plan’s projection of future interest rates.

25 “(G) TRANSITION RULE.—

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

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

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

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

23 “(3) MORTALITY TABLES.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraphs (C) and (D), the mortality table

1 used in determining any present value or mak-
2 ing any computation under this section shall be
3 the RP-2000 Combined Mortality Table, using
4 Scale AA, as published by the Society of Actu-
5 aries, as in effect on the date of the enactment
6 of the Pension Security and Transparency Act
7 of 2005 and as revised from time to time under
8 subparagraph (B).

9 “(B) PERIODIC REVISION.—The Secretary
10 shall (at least every 10 years) make revisions in
11 any table in effect under subparagraph (A) to
12 reflect the actual experience of pension plans
13 and projected trends in such experience.

14 “(C) SUBSTITUTE MORTALITY TABLE.—

15 “(i) IN GENERAL.—Upon request by
16 the plan sponsor and approval by the Sec-
17 retary, a mortality table which meets the
18 requirements of clause (ii) shall be used in
19 determining any present value or making
20 any computation under this section during
21 the 10-consecutive plan year period speci-
22 fied in the request. A mortality table de-
23 scribed in this clause shall cease to be in
24 effect if the plan actuary determines at

1 any time that such table does not meet the
2 requirements of clause (ii).

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

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

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

17 “(III) except as provided by the
18 Secretary, such table will be used by
19 all plans maintained by the plan spon-
20 sor and all members of any controlled
21 group which includes the plan spon-
22 sor, and

23 “(IV) such table is significantly
24 different from the table described in
25 subparagraph (A).

1 “(iii) DEADLINE FOR DISPOSITION OF
2 APPLICATION.—Any mortality table sub-
3 mitted to the Secretary for approval under
4 this subparagraph shall be treated as in ef-
5 fect for the first plan year in the 10-year
6 period described in clause (i) unless the
7 Secretary, during the 180-day period be-
8 ginning on the date of such submission,
9 disapproves of such table and provides the
10 reasons that such table fails to meet the
11 requirements of clause (ii). The 180-day
12 period shall be extended for any period
13 during which the Secretary has requested
14 information from the plan sponsor and
15 such information has not been provided.

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

19 “(i) IN GENERAL.—The Secretary
20 shall establish mortality tables which may
21 be used (in lieu of the tables under sub-
22 paragraph (A)) under this subsection for
23 individuals who are entitled to benefits
24 under the plan on account of disability.
25 The Secretary shall establish separate ta-

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

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

15 “(iii) PERIODIC REVISION.—The Sec-
16 retary shall (at least every 10 years) make
17 revisions in any table in effect under clause
18 (i) to reflect the actual experience of pen-
19 sion plans and projected trends in such ex-
20 perience.

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

1 set forth in the mortality table described in sec-
2 tion 412(l)(7)(C)(ii) (as in effect for plan years
3 beginning in 2006) shall be phased in ratably
4 over the first period of 5 plan years beginning
5 in or after 2007 so as to be fully effective for
6 the fifth plan year.

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

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

18 “(B) any difference in the present value of
19 such future benefit payments resulting from the
20 use of actuarial assumptions, in determining
21 benefit payments in any such optional form of
22 benefits, which are different from those speci-
23 fied in this subsection.

24 “(5) APPROVAL OF LARGE CHANGES IN ACTU-
25 ARIAL ASSUMPTIONS.—

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

5 “(B) PLANS TO WHICH PARAGRAPH AP-
6 PLIES.—This paragraph shall apply to a plan
7 only if—

8 “(i) the aggregate unfunded benefits
9 as of the close of the preceding plan year
10 (as determined under section
11 4006(a)(3)(E)(iii) of the Employee Retirement
12 Income Security Act of 1974) of such
13 plan and all other plans maintained by the
14 contributing sponsors (as defined in sec-
15 tion 4001(a)(13) of such Act) and mem-
16 bers of such sponsors’ controlled groups
17 (as defined in section 4001(a)(14) of such
18 Act) which are covered by title IV of such
19 Act (disregarding plans with no unfunded
20 benefits) exceed \$50,000,000; and

21 “(ii) the change in assumptions (de-
22 termined after taking into account any
23 changes in interest rate and mortality
24 table) results in a decrease in the funding
25 shortfall of the plan for the current plan

1 year that exceeds \$50,000,000, or that ex-
2 ceeds \$5,000,000 and that is 5 percent or
3 more of the funding target of the plan be-
4 fore such change.

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

6 “(1) FUNDING TARGET FOR PLANS IN AT-RISK
7 STATUS.—

8 “(A) IN GENERAL.—In the case of a plan
9 to which this subsection applies for a plan year,
10 the funding target of the plan for the plan year
11 is equal to the present value of all liabilities to
12 participants and their beneficiaries under the
13 plan for the plan year, as determined by using
14 the additional actuarial assumptions described
15 in subparagraph (B).

16 “(B) ADDITIONAL ACTUARIAL ASSUMP-
17 TIONS.—The actuarial assumptions described in
18 this subparagraph are as follows:

19 “(i) All employees who are not other-
20 wise assumed to retire as of the valuation
21 date but who will be eligible to elect bene-
22 fits during the plan year and the 7 suc-
23 ceeding plan years shall be assumed to re-
24 tire at the earliest retirement date under
25 the plan but not before the end of the plan

1 year for which the at-risk target liability
2 and at-risk target normal cost are being
3 determined.

4 “(ii) All employees shall be assumed
5 to elect the retirement benefit available
6 under the plan at the assumed retirement
7 age (determined after application of clause
8 (i)) which would result in the highest
9 present value of liabilities.

10 “(2) TARGET NORMAL COST OF AT-RISK
11 PLANS.—In the case of a plan to which this sub-
12 section applies for a plan year, the target normal
13 cost of the plan for such plan year shall be equal to
14 the present value of all benefits which are expected
15 to accrue or be earned under the plan during the
16 plan year, determined using the additional actuarial
17 assumptions described in paragraph (1)(B).

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

19 “(A) the at-risk target liability be less than
20 the target liability, as determined without re-
21 gard to this subsection, or

22 “(B) the at-risk target normal cost be less
23 than the target normal cost, as determined
24 without regard to this subsection.

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

2 For purposes of this subsection, a plan is in at-risk
3 status for a plan year if—

4 “(A) the plan is maintained by a finan-
5 cially-weak employer, and

6 “(B) the funding target attainment per-
7 centage for the plan year is less than 93 per-
8 cent.

9 “(5) FINANCIALLY-WEAK EMPLOYER.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the term ‘financially-weak employer’
12 means any employer if—

13 “(i) as of the valuation date for each
14 of the years during a period of at least 3
15 consecutive plan years ending with the
16 plan year—

17 “(I) the employer has an out-
18 standing senior unsecured debt instru-
19 ment which is rated lower than invest-
20 ment grade by each of the nationally
21 recognized statistical rating organiza-
22 tions for corporate bonds that has
23 issued a credit rating for such instru-
24 ment, or

1 “(II) if no such debt instrument
2 has been rated by such an organiza-
3 tion but 1 or more of such organiza-
4 tions has made an issuer credit rating
5 for such employer, all such organiza-
6 tions which have so rated the em-
7 ployer have rated such employer lower
8 than investment grade, and

9 “(ii) at least 2 of the years during
10 such period are deterioration years.

11 If an employer is treated as a financially-weak
12 employer for any plan year, clause (ii) shall not
13 apply in determining whether the employer is so
14 treated for any succeeding plan year in any
15 continuous period of plan years for which the
16 employer is treated as a financially-weak em-
17 ployer.

18 “(B) CONTROLLED GROUP EXCEPTION.—

19 If an employer treated as a financially-weak
20 employer under subparagraph (A) is a member
21 of a controlled group (as defined in section
22 412(e)(4)), the employer shall not be treated as
23 a financially-weak employer if a significant
24 member (as determined under regulations pre-
25 scribed by the Secretary) of such group has an

1 outstanding senior unsecured debt instrument
2 that is rated as being investment grade by an
3 organization described in subparagraph (A).

4 “(C) EMPLOYERS WITH NO RATINGS.—
5 If—

6 “(i) an employer has no debt instru-
7 ment described in subparagraph (A)(i)
8 which was rated by an organization de-
9 scribed in such subparagraph, and

10 “(ii) no such organization has made
11 an issuer credit rating for such employer,
12 then such employer shall only be treated as a
13 financially-weak employer to the extent provided
14 in regulations prescribed by the Secretary.

15 “(6) DETERMINATION OF DETERIORATION
16 YEAR.—For purposes of paragraph (5), the term
17 ‘deterioration year’ means any year during the pe-
18 riod described in paragraph (5)(A)(i) for which the
19 rating described in subclause (I) or (II) of para-
20 graph (5)(A)(i) by each organization is either—

21 “(A) lower than the lowest rating of the
22 employer by such organization for a preceding
23 year in such period, or

24 “(B) the lowest rating used by such orga-
25 nization.

1 “(7) YEARS BEFORE EFFECTIVE DATE.—For
2 purposes of paragraphs (5) and (6), plan years be-
3 ginning before 2007 shall not be taken into account.

4 “(8) TRANSITION BETWEEN APPLICABLE FUND-
5 ING TARGETS AND BETWEEN APPLICABLE TARGET
6 NORMAL COSTS.—

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

15 “(i) the amount determined under this
16 section without regard to this subsection,
17 plus

18 “(ii) the transition percentage for
19 such plan year of the excess of the amount
20 determined under this subsection (without
21 regard to this paragraph) over the amount
22 determined under this section without re-
23 gard to this subsection.

24 “(B) IMPROVEMENT YEARS NOT TAKEN
25 INTO ACCOUNT.—

1 “(i) IN GENERAL.—An improvement
 2 year shall not be taken into account in de-
 3 termining any consecutive period of plan
 4 years for purposes of subparagraph (A).

5 “(ii) APPLICATION OF SUBSECTION
 6 AFTER IMPROVEMENT YEAR ENDS.—Plan
 7 years immediately before and after an im-
 8 provement year (or consecutive period of
 9 improvement years) shall be treated as
 10 consecutive for purposes of subparagraph
 11 (A).

12 “(iii) IMPROVEMENT YEAR.—For pur-
 13 poses of this subparagraph, the term ‘im-
 14 provement year’ means any plan year for
 15 which any rating described in subclause (I)
 16 or (II) of paragraph (5)(A)(i) is higher
 17 than such rating for the preceding plan
 18 year.

19 “(C) TRANSITION PERCENTAGE.—For pur-
 20 poses of subparagraph (A), the transition per-
 21 centage shall be determined in accordance with
 22 the following table:

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

1 “(D) YEARS BEFORE EFFECTIVE DATE.—
2 For purposes of this paragraph, plan years be-
3 ginning before 2007 shall not be taken into ac-
4 count.

5 “(9) PLANS TO WHICH SUBSECTION APPLIES.—

6 “(A) IN GENERAL.—Except as provided in
7 this paragraph, this subsection shall apply to
8 any plan to which this section applies and
9 which is in at-risk status for the plan year.

10 “(B) EXCEPTION FOR SMALL PLANS.—

11 This subsection shall not apply to a plan for a
12 plan year if the plan was described in sub-
13 section (g)(2)(B) for the preceding plan year,
14 determined by substituting ‘500’ for ‘100’.

15 “(C) EXCEPTION FOR PLANS MAINTAINED

16 BY CERTAIN COOPERATIVES.—This subsection
17 shall not apply to an eligible cooperative plan
18 described in subparagraph (D).

19 “(D) ELIGIBLE COOPERATIVE PLAN DE-

20 FINED.—For purposes of subparagraph (C), a
21 plan shall be treated as an eligible cooperative
22 plan for a plan year if the plan is maintained
23 by more than 1 employer and at least 85 per-
24 cent of the employers are—

1 “(i) rural cooperatives (as defined in
2 section 401(k)(7)(B) without regard to
3 clause (iv) thereof), or

4 “(ii) organizations which are—

5 “(I) cooperative organizations de-
6 scribed in section 1381(a) which are
7 more than 50-percent owned by agri-
8 cultural producers or by cooperatives
9 owned by agricultural producers, or

10 “(II) more than 50-percent
11 owned, or controlled by, one or more
12 cooperative organizations described in
13 subclause (I).

14 A plan shall also be treated as an eligible coop-
15 erative plan for any plan year for which it is de-
16 scribed in section 210(a) of the Employee Re-
17 tirement Income Security Act of 1974 and is
18 maintained by a rural telephone cooperative as-
19 sociation described in section 3(40)(B)(v) of
20 such Act.

21 “(E) EXCEPTION FOR PLANS SECURED BY
22 THIRD PARTIES BOUND BY PBGC AGREE-
23 MENTS.—This subsection shall not apply to any
24 plan if—

1 “(i) a person other than the employer
2 obligated to contribute under the plan is,
3 under the terms of an agreement with the
4 Pension Benefit Guaranty Corporation, lia-
5 ble for any failure of the employer to meet
6 its obligation to pay any minimum required
7 contribution or termination liability with
8 respect to the plan; and

9 “(ii) such person is not a financially-
10 weak employer under paragraph (5).

11 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
12 TIONS.—

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

17 “(2) INTEREST.—Any payment required under
18 paragraph (1) for a plan year made after the valu-
19 ation date for such plan year shall be increased by
20 interest for the period from the valuation date to the
21 payment date, determined by using the effective rate
22 of interest for the plan for such plan year.

23 “(3) ACCELERATED QUARTERLY CONTRIBUTION
24 SCHEDULE FOR UNDERFUNDED PLANS.—

1 “(A) INTEREST PENALTY FOR FAILURE TO
2 MEET ACCELERATED QUARTERLY PAYMENT
3 SCHEDULE.—A plan shall make the required in-
4 stallments under this paragraph for a plan year
5 if the plan had a funding shortfall for the pre-
6 ceding plan year. If the required installment is
7 not paid in full, then the minimum required
8 contribution for the plan year (as increased
9 under paragraph (2)) shall be further increased
10 by an amount equal to the interest on the
11 amount of the underpayment for the period of
12 the underpayment, using an interest rate equal
13 to the excess of—

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

17 “(ii) the effective rate of interest for
18 the plan for the plan year.

19 “(B) AMOUNT OF UNDERPAYMENT, PE-
20 RIOD OF UNDERPAYMENT.—For purposes of
21 subparagraph (A)—

22 “(i) AMOUNT.—The amount of the
23 underpayment shall be the excess of—

24 “(I) the required installment,
25 over

1 installments are set forth in the following
2 table:

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

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

5 “(i) IN GENERAL.—The amount of
6 any required installment shall be 25 per-
7 cent of the required annual payment.

8 “(ii) REQUIRED ANNUAL PAYMENT.—
9 For purposes of clause (i), the term ‘re-
10 quired annual payment’ means the lesser
11 of—

12 “(I) 90 percent of the minimum
13 required contribution (without regard
14 to any waiver under section 302(c)) to
15 the plan for the plan year under this
16 section, or

17 “(II) in the case of a plan year
18 beginning after 2007, 100 percent of
19 the minimum required contribution
20 (without regard to any waiver under

1 section 302(c)) to the plan for the
2 preceding plan year.

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

6 “(E) FISCAL YEARS AND SHORT YEARS.—

7 “(i) FISCAL YEARS.—In applying this
8 paragraph to a plan year beginning on any
9 date other than January 1, there shall be
10 substituted for the months specified in this
11 paragraph, the months which correspond
12 thereto.

13 “(ii) SHORT PLAN YEAR.—This sub-
14 paragraph shall be applied to plan years of
15 less than 12 months in accordance with
16 regulations prescribed by the Secretary of
17 the Treasury.

18 “(4) LIQUIDITY REQUIREMENT IN CONNECTION
19 WITH QUARTERLY CONTRIBUTIONS.—

20 “(A) IN GENERAL.—A plan to which this
21 paragraph applies shall be treated as failing to
22 pay the full amount of any required installment
23 under paragraph (3) to the extent that the
24 value of the liquid assets paid in such install-
25 ment is less than the liquidity shortfall (wheth-

1 er or not such liquidity shortfall exceeds the
2 amount of such installment required to be paid
3 but for this paragraph).

4 “(B) PLANS TO WHICH PARAGRAPH AP-
5 PLIES.—This paragraph shall apply to a plan
6 which—

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

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

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

17 “(D) LIMITATION ON INCREASE.—If the
18 amount of any required installment is increased
19 by reason of subparagraph (A), in no event
20 shall such increase exceed the amount which,
21 when added to prior installments for the plan
22 year, is necessary to increase the funding target
23 attainment percentage of the plan for the plan
24 year (taking into account the expected increase

1 in funding target due to benefits accruing or
2 earned during the plan year) to 100 percent.

3 “(E) DEFINITIONS.—For purposes of this
4 subparagraph:

5 “(i) LIQUIDITY SHORTFALL.—The
6 term ‘liquidity shortfall’ means, with re-
7 spect to any required installment, an
8 amount equal to the excess (as of the last
9 day of the quarter for which such install-
10 ment is made) of—

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

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

15 “(ii) BASE AMOUNT.—

16 “(I) IN GENERAL.—The term
17 ‘base amount’ means, with respect to
18 any quarter, an amount equal to 3
19 times the sum of the adjusted dis-
20 bursements from the plan for the 12
21 months ending on the last day of such
22 quarter.

23 “(II) SPECIAL RULE.—If the
24 amount determined under subclause
25 (I) exceeds an amount equal to 2

1 times the sum of the adjusted dis-
2 bursements from the plan for the 36
3 months ending on the last day of the
4 quarter and an enrolled actuary cer-
5 tifies to the satisfaction of the Sec-
6 retary that such excess is the result of
7 nonrecurring circumstances, the base
8 amount with respect to such quarter
9 shall be determined without regard to
10 amounts related to those nonrecurring
11 circumstances.

12 “(iii) DISBURSEMENTS FROM THE
13 PLAN.—The term ‘disbursements from the
14 plan’ means all disbursements from the
15 trust, including purchases of annuities,
16 payments of single sums and other bene-
17 fits, and administrative expenses.

18 “(iv) ADJUSTED DISBURSEMENTS.—
19 The term ‘adjusted disbursements’ means
20 disbursements from the plan reduced by
21 the product of—

22 “(I) the plan’s funding target at-
23 tainment percentage for the plan year,
24 and

1 “(II) the sum of the purchases of
2 annuities, payments of single sums,
3 and such other disbursements as the
4 Secretary shall provide in regulations.

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

9 “(vi) QUARTER.—The term ‘quarter’
10 means, with respect to any required install-
11 ment, the 3-month period preceding the
12 month in which the due date for such in-
13 stallment occurs.

14 “(F) REGULATIONS.—The Secretary may
15 prescribe such regulations as are necessary to
16 carry out this paragraph.

17 “(k) IMPOSITION OF LIEN WHERE FAILURE TO
18 MAKE REQUIRED CONTRIBUTIONS.—

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

21 “(A) any person fails to make a contribu-
22 tion payment required by section 412 and this
23 section before the due date for such payment,
24 and

1 “(B) the unpaid balance of such payment
2 (including interest), when added to the aggregate
3 unpaid balance of all preceding such payments
4 for which payment was not made before
5 the due date (including interest), exceeds
6 \$1,000,000,

7 then there shall be a lien in favor of the plan in the
8 amount determined under paragraph (3) upon all
9 property and rights to property, whether real or personal,
10 belonging to such person and any other person
11 who is a member of the same controlled group
12 of which such person is a member.

13 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
14 This subsection shall apply to a defined benefit plan
15 which is a single-employer plan covered under section
16 4021 of the Employee Retirement Income Security
17 Act of 1974 for any plan year for which the
18 funding target attainment percentage (as defined in
19 subsection (d)(2)) of such plan is less than 100 percent.
20

21 “(3) AMOUNT OF LIEN.—For purposes of paragraph
22 (1), the amount of the lien shall be equal to
23 the aggregate unpaid balance of contribution payments
24 required under this section and section 302

1 for which payment has not been made before the due
2 date.

3 “(4) NOTICE OF FAILURE; LIEN.—

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

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

18 “(C) CERTAIN RULES TO APPLY.—Any
19 amount with respect to which a lien is imposed
20 under paragraph (1) shall be treated as taxes
21 due and owing the United States and rules
22 similar to the rules of subsections (c), (d), and
23 (e) of section 4068 of the Employee Retirement
24 Income Security Act of 1974 shall apply with

1 respect to a lien imposed by subsection (a) and
2 the amount with respect to such lien.

3 “(5) ENFORCEMENT.—Any lien created under
4 paragraph (1) may be perfected and enforced only
5 by the Pension Benefit Guaranty Corporation, or at
6 the direction of the Pension Benefit Guaranty Cor-
7 poration, by the contributing sponsor (or any mem-
8 ber of the controlled group of the contributing spon-
9 sor).

10 “(6) DEFINITIONS.—For purposes of this
11 subsection—

12 “(A) CONTRIBUTION PAYMENT.—The term
13 ‘contribution payment’ means, in connection
14 with a plan, a contribution payment required to
15 be made to the plan, including any required in-
16 stallment under paragraphs (3) and (4) of sub-
17 section (j).

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

1 **“SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BEN-**
2 **EFIT ACCRUALS UNDER SINGLE-EMPLOYER**
3 **PLANS.**

4 “(a) GENERAL RULE.—For purposes of section
5 401(a)(29), a defined benefit plan which is a single-em-
6 ployer plan shall be treated as meeting the requirements
7 of this section if the plan meets the requirements of sub-
8 sections (b), (c), and (d).

9 “(b) LIMITATIONS ON PLAN AMENDMENTS INCREAS-
10 ING LIABILITY FOR BENEFITS.—

11 “(1) IN GENERAL.—Except as provided in this
12 section, no amendment to a single-employer plan
13 which has the effect of increasing liabilities of the
14 plan by reason of increases in benefits, establish-
15 ment of new benefits, changing the rate of benefit
16 accrual, or changing the rate at which benefits be-
17 come nonforfeitable may take effect during any plan
18 year if the adjusted funding target attainment per-
19 centage as of the valuation date of the plan for such
20 plan year is—

21 “(A) less than 80 percent, or

22 “(B) would be less than 80 percent taking
23 into account such 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 “(3) EXCEPTION FOR CERTAIN BENEFIT IN-
13 CREASES.—Paragraph (1) shall not apply to any
14 amendment which provides for an increase in bene-
15 fits under a formula which is not based on a partici-
16 pant’s compensation, but only if the rate of such in-
17 crease is not in excess of the contemporaneous rate
18 of increase in average wages of participants covered
19 by the amendment.

20 “(c) LIMITATIONS ON ACCELERATED BENEFIT DIS-
21 TRIBUTIONS.—

22 “(1) IN GENERAL.—The requirements of this
23 subsection are met if the plan provides that, with re-
24 spect to any plan year—

1 “(A) if the plan’s adjusted funded target
2 liability percentage as of the valuation date for
3 the preceding plan year was less than 60 per-
4 cent and the preceding plan year is not other-
5 wise in a prohibited period, the plan sponsor
6 shall, in addition to any other contribution re-
7 quired under section 430, contribute for the
8 current plan year and each succeeding plan
9 year in the prohibited period with respect to the
10 current plan year the amount (if any) which,
11 when added to the portion of the minimum re-
12 quired contribution for the plan year described
13 in subparagraphs (B) and (C) of section
14 430(a)(1), is sufficient to result in an adjusted
15 funded target liability percentage for the plan
16 year of 60 percent, and

17 “(B) no prohibited payments will be made
18 during a prohibited period.

19 “(2) PROHIBITED PAYMENT.—For purpose of
20 this subsection—

21 “(A) IN GENERAL.—The term ‘prohibited
22 payment’ means—

23 “(i) any payment, in excess of the
24 monthly amount paid under a single life
25 annuity (plus any social security supple-

1 ments described in the last sentence of sec-
2 tion 411(a)(9)), to a participant or bene-
3 ficiary whose annuity starting date (as de-
4 fined in section 417(f)(2)) occurs during a
5 prohibited period,

6 “(ii) any payment for the purchase of
7 an irrevocable commitment from an insurer
8 to pay benefits, and

9 “(iii) any other payment specified by
10 the Secretary by regulations.

11 “(B) EXCEPTION FOR CERTAIN PAY-
12 MENTS.—In the case of any prohibited period
13 described in paragraph (3)(A), the term ‘pro-
14 hibited payment’ shall not include any payment
15 if the amount of the payment does not exceed
16 the lesser of—

17 “(i) 50 percent of the amount of the
18 payment which could be made without re-
19 gard to this subsection, or

20 “(ii) the present value (determined
21 under guidance prescribed by the Pension
22 Benefit Guaranty Corporation, using the
23 interest and mortality assumptions under
24 section 417(e)) of the maximum guarantee
25 with respect to the participant under sec-

1 tion 4022 of the Employee Retirement In-
2 come Security Act of 1974.

3 The exception under this subparagraph shall
4 only apply once with respect to any participant,
5 except that, for purposes of this sentence, a
6 participant and any beneficiary on his behalf
7 (including an alternate payee, as defined in sec-
8 tion 414(p)(8)) shall be treated as 1 partici-
9 pant. If the accrued benefit of a participant is
10 allocated to such an alternate payee and 1 or
11 more other persons, the amount under clause
12 (ii) shall be allocated among such persons in
13 the same manner as the accrued benefit is allo-
14 cated unless the qualified domestic relations
15 order (as defined in section 414(p)(1)(A)) pro-
16 vides otherwise.

17 “(3) PROHIBITED PERIOD.—For purposes of
18 paragraph (1), the term ‘prohibited period’ means—

19 “(A) except as provided in paragraph (4),
20 if a plan sponsor is required to make the con-
21 tribution for the current plan year under para-
22 graph (1), the period beginning on the 1st day
23 of the plan year and ending on the last day of
24 the 1st period of 2 consecutive plan years (be-
25 ginning on or after such 1st day) for which the

1 plan's adjusted funded target liability percent-
2 age was at least 60 percent,

3 "(B) any period the plan sponsor is in
4 bankruptcy, or

5 "(C) any period during which the plan has
6 a liquidity shortfall (as defined in section
7 430(j)(4)(E)(i)).

8 The prohibited period for purposes of subparagraph
9 (B) shall not include any portion of a plan year
10 (even if the plan sponsor is in bankruptcy during
11 such period) which occurs on or after the date the
12 plan's enrolled actuary certifies that, as of the valu-
13 ation date for the plan year, the plan's adjusted
14 funded target liability percentage is at least 100 per-
15 cent.

16 "(4) SATISFACTION OF REQUIREMENT BEFORE
17 CLOSE OF PLAN YEAR.—If, before the close of the
18 current plan year—

19 "(A) the plan sponsor makes the contribu-
20 tion required to be made under paragraph (1),
21 or

22 "(B) the plan's enrolled actuary certifies
23 that, as of the valuation date for the plan year,
24 the adjusted funded target liability percentage
25 of the plan is at least 60 percent,

1 this subsection shall be applied as if no prohibited
2 period had begun as of the beginning of such year
3 and the plan shall, under rules described by the Sec-
4 retary, restore any payments not made during the
5 prohibited period in effect before the application of
6 this paragraph.

7 “(d) LIMITATION ON BENEFIT ACCRUALS FOR
8 PLANS WITH SEVERE FUNDING SHORTFALLS.—

9 “(1) IN GENERAL.—Except as provided in sub-
10 section (e), a single-employer plan shall provide that
11 all future benefit accruals under the plan shall cease
12 during a severe funding shortfall period, but only to
13 the extent the cessation of such accruals would have
14 been permitted under section 411(d)(6) if the ces-
15 sation had been implemented by a plan amendment
16 adopted immediately before the severe funding short-
17 fall period.

18 “(2) SEVERE FUNDING SHORTFALL PERIOD.—
19 For purposes of paragraph (1), the term ‘severe
20 funding shortfall period’ means in the case of a plan
21 the adjusted funding target attainment percentage
22 of which as of the valuation date of the plan for any
23 plan year is less than 60 percent, the period—

24 “(A) beginning on the 1st day of the suc-
25 ceeding plan year, and

1 “(B) ending on the date the plan’s enrolled
2 actuary certifies that the plan’s funding target
3 attainment percentage is at least 60 percent.

4 “(3) OPPORTUNITY FOR INCREASED FUND-
5 ING.—For purposes of paragraph (2)(A), a plan
6 shall not be treated as described in such paragraph
7 for a plan year if the plan’s enrolled actuary certifies
8 that the plan sponsor has before the end of the plan
9 year contributed (in addition to any minimum re-
10 quired contribution under section 430) the amount
11 sufficient to result in an adjusted funding target at-
12 tainment percentage as of the valuation date for the
13 plan year of 60 percent.

14 “(e) EXCEPTION FOR CERTAIN COLLECTIVELY BAR-
15 GAINED BENEFITS.—In the case of a plan maintained
16 pursuant to a collective bargaining agreement between em-
17 ployee representatives and the plan sponsor and in effect
18 before the beginning of the first day on which a limitation
19 would otherwise apply under subsections (b), (c), or (d)—

20 “(1) such limitations shall not apply to any
21 amendment, prohibited payment, or accrual with re-
22 spect to such plan, but

23 “(2) the plan sponsor shall contribute (in addi-
24 tion to any minimum required contribution under
25 section 430) the amount sufficient to result in a

1 funding target attainment percentage (as of the
2 valuation date for the plan year in which any such
3 limitation would otherwise apply) equal to the per-
4 centage necessary to prevent the limitation from ap-
5 plying.

6 “(f) RULES RELATING TO REQUIRED CONTRIBU-
7 TIONS.—

8 “(1) SECURITY MAY BE PROVIDED.—

9 “(A) IN GENERAL.—For purposes of this
10 section, the adjusted funding target attainment
11 percentage shall be determined by treating as
12 an asset of the plan any security provided by a
13 plan sponsor in a form meeting the require-
14 ments of subparagraph (B) .

15 “(B) FORM OF SECURITY.—The security
16 required under subparagraph (A) shall consist
17 of—

18 “(i) a bond issued by a corporate sur-
19 ety company that is an acceptable surety
20 for purposes of section 412 of the Em-
21 ployee Retirement Income Security Act of
22 1974,

23 “(ii) cash, or United States obliga-
24 tions which mature in 3 years or less, held

1 in escrow by a bank or similar financial in-
2 stitution, or

3 “(iii) such other form of security as is
4 satisfactory to the Secretary and the par-
5 ties involved.

6 “(C) ENFORCEMENT.—Any security pro-
7 vided under subparagraph (A) may be perfected
8 and enforced at any time after the earlier of—

9 “(i) the date on which the plan termi-
10 nates,

11 “(ii) if there is a failure to make a
12 payment of the minimum required con-
13 tribution for any plan year beginning after
14 the security is provided, the due date for
15 the payment under section 430(j), or

16 “(iii) if the adjusted funding target
17 attainment percentage is less than 60 per-
18 cent for a consecutive period of 7 years,
19 the valuation date for the last year in the
20 period.

21 “(D) RELEASE OF SECURITY.—The secu-
22 rity shall be released (and any amounts there-
23 under shall be refunded together with any inter-
24 est accrued thereon) at such time as the Sec-
25 retary may prescribe in regulations, including

1 regulations for partial releases of the security
2 by reason of increases in the funding target at-
3 tainment percentage.

4 “(2) PREFUNDING BALANCE MAY NOT BE
5 USED.—No prefunding balance under section 430(f)
6 may be used to satisfy any required contribution
7 under this section.

8 “(3) TREATMENT AS UNPAID MINIMUM RE-
9 QUIRED CONTRIBUTION.—The amount of any re-
10 quired contribution which a plan sponsor fails to
11 make under subsection (b) or (d) for any plan year
12 shall be treated as an unpaid minimum required
13 contribution for purposes of subsection (j) and (k) of
14 section 430 and for purposes of section 4971.

15 “(g) NEW PLANS.—Subsections (b) and (d) shall not
16 apply to a plan for the first 5 plan years of the plan. For
17 purposes of this subsection, the reference in this sub-
18 section to a plan shall include a reference to any prede-
19 cessor plan.

20 “(h) PRESUMED UNDERFUNDING FOR PURPOSES OF
21 BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUND-
22 ING STATUS.—

23 “(1) PRESUMPTION OF CONTINUED UNDER-
24 FUNDING.—In any case in which a benefit limitation
25 under subsection (b), (c), or (d) has been applied to

1 a plan with respect to the plan year preceding the
2 current plan year, the adjusted funding target at-
3 tainment percentage of the plan as of the valuation
4 date of the plan for the current plan year shall be
5 presumed to be equal to the adjusted funding target
6 attainment percentage of the plan as of the valu-
7 ation date of the plan for the preceding plan year
8 until the enrolled actuary of the plan certifies the
9 actual adjusted funding target attainment percent-
10 age of the plan as of the valuation date of the plan
11 for the current plan year.

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

20 “(i) TREATMENT OF PLAN AS OF CLOSE OF PROHIB-
21 ITED OR CESSATION PERIOD.—For purposes of applying
22 this part—

23 “(1) OPERATION OF PLAN AFTER PERIOD.—
24 Unless the plan provides otherwise, payments and
25 accruals will resume effective as of the day following

1 the close of a period of limitation of payment or ac-
2 crual of benefits under subsection (c) or (d).

3 “(2) TREATMENT OF AFFECTED BENEFITS.—
4 Nothing in this subsection shall be construed as af-
5 fecting the plan’s treatment of benefits which would
6 have been paid or acerued but for this section.

7 “(j) FUNDING TARGET ATTAINMENT PERCENT-
8 AGE.—For purposes of this section—

9 “(1) IN GENERAL.—The term ‘funding target
10 attainment percentage’ has the same meaning given
11 such term by section 430(d)(2).

12 “(2) ADJUSTED FUNDED TARGET LIABILITY
13 PERCENTAGE.—The term ‘adjusted funded target li-
14 ability percentage’ means the funded target liability
15 percentage which is determined under subparagraph
16 (A) by increasing each of the amounts under sub-
17 paragraphs (A) and (B) of section 430(d)(2) by the
18 aggregate amount of purchases of annuities, pay-
19 ments of single sums, and such other disbursements
20 as the Secretary shall prescribe in regulations, which
21 were made by the plan during the preceding 2 plan
22 years.

23 “(k) SPECIAL RULES.—

1 “(1) BANKRUPTCY.—In the case of a plan
2 sponsor during any period the plan is in
3 bankruptcy—

4 “(A) subsection (b) shall be applied by
5 substituting ‘100 percent’ for ‘80 percent’ each
6 place it appears,

7 “(B) any exception under subsection (b)
8 for any benefit increases pursuant to a collec-
9 tive bargaining agreement shall not apply, and

10 “(C) the exception under subsection (f)
11 shall not apply for purposes of subsection (b).

12 “(2) YEARS BEFORE EFFECTIVE DATE.—No
13 plan year beginning before 2007 shall be taken into
14 account in determining whether this section applies
15 to any plan year beginning after 2006.”.

16 (b) EFFECTIVE DATES.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to plan years beginning after
19 December 31, 2006.

20 (2) COLLECTIVE BARGAINING EXCEPTION.—In
21 the case of a plan maintained pursuant to 1 or more
22 collective bargaining agreements between employee
23 representatives and 1 or more employers ratified be-
24 fore January 1, 2007, the amendments made by this

1 section shall not apply to plan years beginning be-
2 fore the earlier of—

3 (A) the later of—

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

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

14 (B) January 1, 2010.

15 For purposes of subparagraph (A)(i), any plan
16 amendment made pursuant to a collective bargaining
17 agreement relating to the plan which amends the
18 plan solely to conform to any requirement added by
19 this section shall not be treated as a termination of
20 such collective bargaining agreement.

21 **SEC. 114. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EM-**
22 **PLOYER PLANS.**

23 (a) IN GENERAL.—Section 404 of the Internal Rev-
24 enue Code of 1986 (relating to deduction for contributions
25 of an employer to an employees' trust or annuity plan and

1 compensation under a deferred payment plan) is
2 amended—

3 (1) in subsection (a)(1)(A), by inserting “in the
4 case of a defined benefit plan other than a multiem-
5 ployer plan, in an amount determined under sub-
6 section (o), and in the case of any other plan” after
7 “section 501(a),” and

8 (2) by inserting at the end the following new
9 subsection:

10 “(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER
11 PLANS.—For purposes of subsection (a)(1)(A)—

12 “(1) IN GENERAL.—In the case of a defined
13 benefit plan to which subsection (a)(1)(A) applies
14 (other than a multiemployer plan), the amount de-
15 termined under this subsection for any taxable year
16 shall be equal to the greater of—

17 “(A) the sum of the amounts determined
18 under paragraph (2) with respect to each plan
19 year ending with or within the taxable year, or

20 “(B) the sum of the minimum required
21 contributions under section 430 for such plan
22 years.

23 “(2) DETERMINATION OF AMOUNT.—

1 “(A) IN GENERAL.—The amount deter-
2 mined under this paragraph for any plan year
3 shall be equal to the excess (if any) of—

4 “(i) the sum of—

5 “(I) the funding target for the
6 plan year,

7 “(II) the target normal cost for
8 the plan year, and

9 “(III) the cushion amount for the
10 plan year, over

11 “(ii) the value (determined under sec-
12 tion 430(g)(2)) of the assets of the plan
13 which are held by the plan as of the valu-
14 ation date for the plan year.

15 “(B) SPECIAL RULE FOR CERTAIN EM-
16 PLOYERS.—If section 430(i) does not apply to
17 a plan for a plan year, the amount determined
18 under subparagraph (A)(i) for the plan year
19 shall in no event be less than the sum of—

20 “(i) the funding target for the plan
21 year (determined as if section 430(i) ap-
22 plied to the plan), plus

23 “(ii) the target normal cost for the
24 plan year (as so determined).

1 “(3) CUSHION AMOUNT.—For purposes of para-
2 graph (2)(A)(i)(III)—

3 “(A) IN GENERAL.—The cushion amount
4 for any plan year is the sum of—

5 “(i) 80 percent of the funding target
6 for the plan year, and

7 “(ii) the amount by which the funding
8 target for the plan year would increase if
9 the plan were to take into account—

10 “(I) increases in compensation
11 which are expected to occur in suc-
12 ceeding plan years, or

13 “(II) if the plan does not base
14 benefits for service to date on com-
15 pensation, increases in benefits which
16 are expected to occur in succeeding
17 plan years (determined on the basis of
18 the average annual increase in bene-
19 fits over the 6 immediately preceding
20 plan years).

21 “(B) LIMITATIONS.—

22 “(i) IN GENERAL.—In making the
23 computation under subparagraph (A)(ii),
24 the plan’s actuary shall assume that the

1 limitations under subsection (l) and section
2 415(b) shall apply.

3 “(ii) EXPECTED INCREASES.—In the
4 case of a plan year during which a plan is
5 covered under section 4021 of the Em-
6 ployee Retirement Income Security Act of
7 1974, the plan’s actuary may, notwith-
8 standing subsection (j) or (l), take into ac-
9 count increases in the limitations which are
10 expected to occur in succeeding plan years.

11 “(4) SPECIAL RULES FOR PLANS WITH 100 OR
12 FEWER PARTICIPANTS.—

13 “(A) IN GENERAL.—For purposes of deter-
14 mining the amount under paragraph (3) for any
15 plan year, in the case of a plan which has 100
16 or fewer participants for the plan year, the li-
17 ability of the plan attributable to benefit in-
18 creases for highly compensated employees (as
19 defined in section 414(q)) resulting from a plan
20 amendment which is made or becomes effective,
21 whichever is later, within the last 2 years shall
22 not be taken into account in determining the
23 target liability.

24 “(B) RULE FOR DETERMINING NUMBER
25 OF PARTICIPANTS.—For purposes of deter-

1 mining the number of plan participants, all de-
2 fined benefit plans maintained by the same em-
3 ployer (or any member of such employer's con-
4 trolled group (within the meaning of section
5 412(f)(4))) shall be treated as one plan, but
6 only participants of such member or employer
7 shall be taken into account.

8 “(5) SPECIAL RULE FOR TERMINATING
9 PLANS.—In the case of a plan which, subject to sec-
10 tion 4041 of the Employee Retirement Income Secu-
11 rity Act of 1974, terminates during the plan year,
12 the amount determined under paragraph (2) shall in
13 no event be less than the amount required to make
14 the plan sufficient for benefit liabilities (within the
15 meaning of section 4041(d) of such Act).

16 “(6) ACTUARIAL ASSUMPTIONS.—Any computa-
17 tion under this subsection for any plan year shall
18 use the same actuarial assumptions which are used
19 for the plan year under section 430.

20 “(7) DEFINITIONS.—Any term used in this sub-
21 section which is also used in section 430 shall have
22 the same meaning given such term by section 430.”.

23 (b) EXCEPTION FROM LIMITATION ON DEDUCTION
24 WHERE COMBINATION OF DEFINED CONTRIBUTION AND
25 DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of

1 such Code, as amended by this Act, is amended by adding
2 at the end the following new clause:

3 “(iv) GUARANTEED PLANS.—In apply-
4 ing this paragraph, any single-employer
5 plan covered under section 4021 of the
6 Employee Retirement Income Security Act
7 of 1974 shall not be taken into account.”.

8 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) The last sentence of section 404(a)(1)(A) of
10 such Code is amended by striking “section 412”
11 each place it appears and inserting “section 431”.

12 (2) Section 404(a)(1)(B) of such Code is
13 amended—

14 (A) by striking “In the case of a plan” and
15 inserting “In the case of a multiemployer plan”,

16 (B) by striking “section 412(c)(7)” each
17 place it appears and inserting “section
18 431(c)(6)”,

19 (C) by striking “section 412(c)(7)(B)” and
20 inserting “section 431(c)(6)(A)(ii)”,

21 (D) by striking “section 412(c)(7)(A)” and
22 inserting “section 431(c)(6)(A)(i)”, and

23 (E) by striking “section 412” and insert-
24 ing “section 431”.

1 (3) Section 404(a)(7)(A) of such Code, as
2 amended by this Act, is amended—

3 (A) by adding at the end of subparagraph
4 (A) the following new sentence: “In the case of
5 a defined benefit plan which is a single em-
6 ployer plan, the amount necessary to satisfy the
7 minimum funding standard provided by section
8 412 shall not be less than the plan’s funding
9 shortfall determined under section 430.”, and

10 (B) by striking subparagraph (D) and in-
11 serting:

12 “(D) INSURANCE CONTRACT PLANS.—For
13 purposes of this paragraph, a plan described in
14 section 412(g)(3) shall be treated as a defined
15 benefit plan.”.

16 (4) Section 404A(g)(3)(A) of such Code is
17 amended by striking “paragraphs (3) and (7) of sec-
18 tion 412(c)” and inserting “paragraphs (3) and (6)
19 of section 431(c)”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to plan years beginning after De-
22 cember 31, 2006.

23 **SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.**

24 (a) AMENDMENTS RELATED TO QUALIFICATION RE-
25 QUIREMENTS.—

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

3 “(29) BENEFIT LIMITATIONS ON PLANS IN AT-
4 RISK STATUS.—In the case of a defined benefit plan
5 (other than a multiemployer plan) to which the re-
6 quirements of section 412 apply, the trust of which
7 the plan is a part shall not constitute a qualified
8 trust under this subsection unless the plan meets the
9 requirements of section 436.”.

10 (2) Section 401(a)(32) of such Code is
11 amended—

12 (A) in subparagraph (A), by striking
13 “412(m)(5)” each place it appears and insert-
14 ing “section 430(j)(4)”, and

15 (B) in subparagraph (C), by striking “sec-
16 tion 412(m)” and inserting “section 430(j)”.

17 (3) Section 401(a), as amended by this Act, is
18 amended by striking paragraph (33) and by redesignig-
19 nating paragraphs (34) and (35) as paragraph (33)
20 and (34).

21 (b) VESTING RULES.—Section 411 of such Code is
22 amended—

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

25 (2) in subsection (b)(1)(F)—

1 (A) by striking “paragraphs (2) and (3) of
2 section 412(i)” in clause (ii) and inserting
3 “subparagraphs (B) and (C) of section
4 412(e)(3)”, and

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

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

11 (c) MERGERS AND CONSOLIDATIONS OF PLANS.—

12 Subclause (I) of section 414(l)(2)(B)(i) of such Code is
13 amended to read as follows:

14 “(I) the amount determined
15 under section 431(c)(6)(A)(i) in the
16 case of a multiemployer plan (and the
17 sum of the funding shortfall and tar-
18 get normal cost determined under sec-
19 tion 430 in the case of any other
20 plan), over”.

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

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

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

3 “(A) the lesser of—

4 “(i) the fair market value of the
5 plan’s assets (reduced by the prefunding
6 balance determined under section 430(f)),
7 or

8 “(ii) the value of plan assets as deter-
9 mined under section 430(g)(3) after reduc-
10 tion under section 430(f), over

11 “(B) 125 percent of the sum of the fund-
12 ing shortfall and the target normal cost deter-
13 mined under section 430 for such plan year.”.

14 (2) Section 420(e)(4) of such Code is amended
15 to read as follows:

16 “(4) COORDINATION WITH SECTION 430.—In
17 the case of a qualified transfer, any assets so trans-
18 ferred shall not, for purposes of this section, be
19 treated as assets in the plan.”.

20 (e) EXCISE TAXES.—

21 (1) IN GENERAL.—Subsections (a) and (b) of
22 section 4971 of such Code are amended to read as
23 follows:

24 “(a) INITIAL TAX.—If at any time during any taxable
25 year an employer maintains a plan to which section 412

1 applies, there is hereby imposed for the taxable year a tax
2 equal to—

3 “(1) in the case of a single-employer plan, 10
4 percent of the aggregate unpaid minimum required
5 contributions for all plan years remaining unpaid as
6 of the end of any plan year ending with or within
7 the taxable year, and

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

12 “(b) ADDITIONAL TAX.—If—

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

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

21 there is hereby imposed a tax equal to 100 percent of the
22 unpaid minimum required contribution or accumulated
23 funding deficiency, whichever is applicable, to the extent
24 not so paid or corrected.”.

25 (2) Section 4971(c) of such Code is amended—

1 (A) by striking “the last two sentences of
2 section 412(a)” in paragraph (1) and inserting
3 “section 431”, and

4 (B) by adding at the end the following new
5 paragraph:

6 “(4) UNPAID MINIMUM REQUIRED CONTRIBU-
7 TION.—

8 “(A) IN GENERAL.—The term ‘unpaid
9 minimum required contribution’ means, with re-
10 spect to any plan year, any minimum required
11 contribution under section 430 for the plan
12 year which is not paid on or before the due date
13 (as determined under section 430(j)(1)) for the
14 plan year.

15 “(B) ORDERING RULE.—Any payment to
16 or under a plan for any plan year shall be allo-
17 cated first to unpaid minimum required con-
18 tributions for all preceding plan years on a
19 first-in, first-out basis and then to the min-
20 imum required contribution under section 430
21 for the plan year.”.

22 (3) Section 4971(e)(1) of such Code is amended
23 by striking “section 412(b)(3)(A)” and inserting
24 “section 412(a)(1)(A)”.

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

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

5 (B) by striking “section 412(m)” and in-
6 sserting “section 430(j)”.

7 (5) Section 4972(c)(7) of such Code is amended
8 by striking “except to the extent that such contribu-
9 tions exceed the full-funding limitation (as defined in
10 section 412(c)(7), determined without regard to sub-
11 paragraph (A)(i)(I) thereof)” and inserting “except,
12 in the case of a multiemployer plan, to the extent
13 that such contributions exceed the full-funding limi-
14 tation (as defined in section 431(c)(6))”.

15 (f) REPORTING REQUIREMENTS.—Section 6059(b) of
16 such Code is amended—

17 (1) by striking “the accumulated funding defi-
18 ciency (as defined in section 412(a))” in paragraph
19 (2) and inserting “the minimum required contribu-
20 tion determined under section 430, or the accumu-
21 lated funding deficiency determined under section
22 431,”, and

23 (2) by striking paragraph (3)(B) and inserting:

24 “(B) the requirements for reasonable actu-
25 arial assumptions under section 430(h)(1) or

1 431(c)(3), whichever are applicable, have been
2 complied with.”.

3 **Subtitle C—Interest Rate Assump-**
4 **tions and Deductible Amounts**
5 **for 2006**

6 **SEC. 121. EXTENSION OF REPLACEMENT OF 30-YEAR**
7 **TREASURY RATES.**

8 (a) AMENDMENTS OF ERISA.—

9 (1) DETERMINATION OF RANGE.—Subclause
10 (II) of section 302(b)(5)(B)(ii) of the Employee Re-
11 tirement Income Security Act of 1974 is amended—

12 (A) by striking “2006” and inserting
13 “2007”, and

14 (B) by striking “AND 2005” in the heading
15 and inserting “, 2005, AND 2006”.

16 (2) DETERMINATION OF CURRENT LIABILITY.—
17 Subclause (IV) of section 302(d)(7)(C)(i) of such
18 Act is amended—

19 (A) by striking “or 2005” and inserting “,
20 2005, or 2006”, and

21 (B) by striking “AND 2005” in the heading
22 and inserting “, 2005, AND 2006”.

23 (3) PBGC PREMIUM RATE.—Subclause (V) of
24 section 4006(a)(3)(E)(iii) of such Act is amended by
25 striking “2006” and inserting “2007”.

1 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

2 (1) DETERMINATION OF RANGE.—Subclause
3 (II) of section 412(b)(5)(B)(ii) of the Internal Rev-
4 enue Code of 1986 is amended—

5 (A) by striking “2006” and inserting
6 “2007”, and

7 (B) by striking “AND 2005” in the heading
8 and inserting “, 2005, AND 2006”.

9 (2) DETERMINATION OF CURRENT LIABILITY.—
10 Subclause (IV) of section 412(l)(7)(C)(i) of such
11 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) PLAN AMENDMENTS.—Clause (ii) of section
17 101(c)(2)(A) of the Pension Funding Equity Act of 2004
18 is amended by striking “2006” and inserting “2007”.

19 **SEC. 122. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

20 (a) IN GENERAL.—Clause (i) of section 404(a)(1)(D)
21 of the Internal Revenue Code of 1986 (relating to special
22 rule in case of certain plans) is amended by striking “sec-
23 tion 412(l)” and inserting “section 412(l)(8)(A), except
24 that section 412(l)(8)(A) shall be applied for purposes of
25 this clause by substituting ‘180 percent (130 percent in

1 the case of a multiemployer plan) of current liability' for
2 'the current liability' in clause (i)."

3 (b) CONFORMING AMENDMENT.—Section 404(a)(1)
4 of the Internal Revenue Code of 1986 is amended by strik-
5 ing subparagraph (F).

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to years beginning after December
8 31, 2005.

9 **SEC. 123. UPDATING DEDUCTION RULES FOR COMBINA-**
10 **TION OF PLANS.**

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

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

1 be treated as employer contributions to 1
2 or more defined contributions to the extent
3 attributable to employer contributions to
4 such plans in such preceding taxable
5 years.”

6 (b) CONFORMING AMENDMENT.—Subparagraph (A)
7 of section 4972(c)(6) of such Code (relating to nondeduct-
8 ible contributions) is amended to read as follows:

9 “(A) so much of the contributions to 1 or
10 more defined contribution plans which are not
11 deductible when contributed solely because of
12 section 404(a)(7) as does not exceed the
13 amount of contributions described in section
14 401(m)(4)(A), or”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to contributions for taxable years
17 beginning after December 31, 2005.

1 **TITLE II—FUNDING AND DEDUC-**
2 **TION RULES FOR MULTIEM-**
3 **PLOYER DEFINED BENEFIT**
4 **PLANS AND RELATED PROVI-**
5 **SIONS**

6 **Subtitle A—Funding Rules**

7 **PART I—AMENDMENTS TO EMPLOYEE**

8 **RETIREMENT INCOME SECURITY ACT OF 1974**

9 **SEC. 201. FUNDING RULES FOR MULTIEmployer DEFINED**
10 **BENEFIT PLANS.**

11 (a) IN GENERAL.—Part 3 of subtitle B of title I of
12 the Employee Retirement Income Security Act of 1974 (as
13 amended by this Act) is amended by inserting after section
14 303 the following new section:

15 “MINIMUM FUNDING STANDARDS FOR MULTIEmployer
16 PLANS

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

20 “(1) except as provided in paragraph (2), the
21 amount, determined as of the end of the plan year,
22 equal to the excess (if any) of the total charges to
23 the funding standard account of the plan for all plan
24 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) separately, with respect to each
21 plan year, the net increase (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 loss (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 loss (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 necessary to amortize
11 each waived funding deficiency (within the
12 meaning of section 302(c)(3)) for each prior
13 plan year in equal annual installments (until
14 fully amortized) over a period of 15 plan years,

15 “(D) the amount necessary to amortize in
16 equal annual installments (until fully amor-
17 tized) over a period of 5 plan years any amount
18 credited to the funding standard account under
19 section 302(b)(3)(D) (as in effect on the day
20 before the date of the enactment of the Pension
21 Security and Transparency Act of 2005), and

22 “(E) the amount necessary to amortize in
23 equal annual installments (until fully amor-
24 tized) over a period of 20 years the contribu-
25 tions which would be required to be made under

1 the plan but for the provisions of section
2 302(c)(7)(A)(i)(I) (as in effect on the day be-
3 fore the date of the enactment of the Pension
4 Security and Transparency Act of 2005).

5 “(3) CREDITS TO ACCOUNT.—For a plan year,
6 the funding standard account shall be credited with
7 the sum of—

8 “(A) the amount considered contributed by
9 the employer to or under the plan for the plan
10 year,

11 “(B) the amount necessary to amortize in
12 equal annual installments (until fully amor-
13 tized)—

14 “(i) separately, with respect to each
15 plan year, the net decrease (if any) in un-
16 funded past service liability under the plan
17 arising from plan amendments adopted in
18 such year, over a period of 15 plan years,

19 “(ii) separately, with respect to each
20 plan year, the net experience gain (if any)
21 under the plan, over a period of 15 plan
22 years, and

23 “(iii) separately, with respect to each
24 plan year, the net gain (if any) resulting
25 from changes in actuarial assumptions

1 used under the plan, over a period of 15
2 plan years,

3 “(C) the amount of the waived funding de-
4 ficiency (within the meaning of section
5 302(c)(3)) for the plan year, and

6 “(D) in the case of a plan year for which
7 the accumulated funding deficiency is deter-
8 mined under the funding standard account if
9 such plan year follows a plan year for which
10 such deficiency was determined under the alter-
11 native minimum funding standard under section
12 305 (as in effect on the day before the date of
13 the enactment of the Pension Security and
14 Transparency Act of 2005), the excess (if any)
15 of any debit balance in the funding standard
16 account (determined without regard to this sub-
17 paragraph) over any debit balance in the alter-
18 native minimum funding standard account.

19 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
20 ORTIZED TO PLAN YEARS BEFORE 2007.—In the case
21 of any amount amortized under section 302(b) (as
22 in effect on the day before the date of the enactment
23 of the Pension Security and Transparency Act of
24 2005) over any period beginning with a plan year
25 beginning before 2007, in lieu of the amortization

1 described in paragraphs (2)(B) and (3)(B), such
2 amount shall continue to be amortized under such
3 section as so in effect.

4 “(5) COMBINING AND OFFSETTING AMOUNTS
5 TO BE AMORTIZED.—Under regulations prescribed
6 by the Secretary of the Treasury, amounts required
7 to be amortized under paragraph (2) or paragraph
8 (3), as the case may be—

9 “(A) may be combined into one amount
10 under such paragraph to be amortized over a
11 period determined on the basis of the remaining
12 amortization period for all items entering into
13 such combined amount, and

14 “(B) may be offset against amounts re-
15 quired to be amortized under the other such
16 paragraph, with the resulting amount to be am-
17 ortized over a period determined on the basis of
18 the remaining amortization periods for all items
19 entering into whichever of the two amounts
20 being offset is the greater.

21 “(6) INTEREST.—The funding standard ac-
22 count (and items therein) shall be charged or cred-
23 ited (as determined under regulations prescribed by
24 the Secretary of the Treasury) with interest at the

1 appropriate rate consistent with the rate or rates of
2 interest used under the plan to determine costs.

3 “(7) SPECIAL RULES RELATING TO CHARGES
4 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
5 For purposes of this part—

6 “(A) WITHDRAWAL LIABILITY.—Any
7 amount received by a multiemployer plan in
8 payment of all or part of an employer’s with-
9 drawal liability under part 1 of subtitle E of
10 title IV shall be considered an amount contrib-
11 uted by the employer to or under the plan. The
12 Secretary of the Treasury may prescribe by reg-
13 ulation additional charges and credits to a mul-
14 tiemployer plan’s funding standard account to
15 the extent necessary to prevent withdrawal li-
16 ability payments from being unduly reflected as
17 advance funding for plan liabilities.

18 “(B) ADJUSTMENTS WHEN A MULTIEM-
19 PLOYER PLAN LEAVES REORGANIZATION.—If a
20 multiemployer plan is not in reorganization in
21 the plan year but was in reorganization in the
22 immediately preceding plan year, any balance in
23 the funding standard account at the close of
24 such immediately preceding plan year—

1 “(i) shall be eliminated by an offset-
2 ting credit or charge (as the case may be),
3 but

4 “(ii) shall be taken into account in
5 subsequent plan years by being amortized
6 in equal annual installments (until fully
7 amortized) over 30 plan years.

8 The preceding sentence shall not apply to the
9 extent of any accumulated funding deficiency
10 under section 4243(a) as of the end of the last
11 plan year that the plan was in reorganization.

12 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
13 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
14 FUND.—Any amount paid by a plan during a
15 plan year to the Pension Benefit Guaranty Cor-
16 poration pursuant to section 4222 of this Act or
17 to a fund exempt under section 501(c)(22) of
18 the Internal Revenue Code of 1986 pursuant to
19 section 4223 of this Act shall reduce the
20 amount of contributions considered received by
21 the plan for the plan year.

22 “(D) INTERIM WITHDRAWAL LIABILITY
23 PAYMENTS.—Any amount paid by an employer
24 pending a final determination of the employer’s
25 withdrawal liability under part 1 of subtitle E

1 of title IV and subsequently refunded to the
2 employer by the plan shall be charged to the
3 funding standard account in accordance with
4 regulations prescribed by the Secretary of the
5 Treasury.

6 “(E) ELECTION FOR DEFERRAL OF
7 CHARGE FOR PORTION OF NET EXPERIENCE
8 LOSS.—If an election is in effect under section
9 302(b)(7)(F) (as in effect on the day before the
10 date of the enactment of the Pension Security
11 and Transparency Act of 2005) for any plan
12 year, the funding standard account shall be
13 charged in the plan year to which the portion
14 of the net experience loss deferred by such elec-
15 tion was deferred with the amount so deferred
16 (and paragraph (2)(B)(ii) shall not apply to the
17 amount so charged).

18 “(F) FINANCIAL ASSISTANCE.—Any
19 amount of any financial assistance from the
20 Pension Benefit Guaranty Corporation to any
21 plan, and any repayment of such amount, shall
22 be taken into account under this section and
23 section 412 of the Internal Revenue Code of
24 1986 in such manner as is determined by the
25 Secretary of the Treasury.

1 “(G) SHORT-TERM BENEFITS.—To the ex-
2 tent that any plan amendment increases the un-
3 funded past service liability under the plan by
4 reason of an increase in benefits which are pay-
5 able under the terms of the plan for a period
6 that does not exceed 14 years from the effective
7 date of the amendment, paragraph (2)(B)(i)
8 shall be applied separately with respect to such
9 increase in unfunded past service liability by
10 substituting the number of years of the period
11 during which such benefits are payable for ‘15’.

12 “(c) ADDITIONAL RULES.—

13 “(1) DETERMINATIONS TO BE MADE UNDER
14 FUNDING METHOD.—For purposes of this part, nor-
15 mal costs, accrued liability, past service liabilities,
16 and experience gains and losses shall be determined
17 under the funding method used to determine costs
18 under the plan.

19 “(2) VALUATION OF ASSETS.—

20 “(A) IN GENERAL.—For purposes of this
21 part, the value of the plan’s assets shall be de-
22 termined on the basis of any reasonable actu-
23 arial method of valuation which takes into ac-
24 count fair market value and which is permitted

1 under regulations prescribed by the Secretary of
2 the Treasury.

3 “(B) ELECTION WITH RESPECT TO
4 BONDS.—The value of a bond or other evidence
5 of indebtedness which is not in default as to
6 principal or interest may, at the election of the
7 plan administrator, be determined on an amor-
8 tized basis running from initial cost at purchase
9 to par value at maturity or earliest call date.
10 Any election under this subparagraph shall be
11 made at such time and in such manner as the
12 Secretary of the Treasury shall by regulations
13 provide, shall apply to all such evidences of in-
14 debtedness, and may be revoked only with the
15 consent of such Secretary.

16 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
17 SONABLE.—For purposes of this section, all costs, li-
18 abilities, rates of interest, and other factors under
19 the plan shall be determined on the basis of actu-
20 arial assumptions and methods—

21 “(A) each of which is reasonable (taking
22 into account the experience of the plan and rea-
23 sonable expectations), and

1 “(B) which, in combination, offer the actu-
2 ary’s best estimate of anticipated experience
3 under the plan.

4 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
5 PERIENCE GAIN OR LOSS.—For purposes of this sec-
6 tion, if—

7 “(A) a change in benefits under the Social
8 Security Act or in other retirement benefits cre-
9 ated under Federal or State law, or

10 “(B) a change in the definition of the term
11 ‘wages’ under section 3121 of the Internal Rev-
12 enue Code of 1986, or a change in the amount
13 of such wages taken into account under regula-
14 tions prescribed for purposes of section
15 401(a)(5) of such Code,

16 results in an increase or decrease in accrued liability
17 under a plan, such increase or decrease shall be
18 treated as an experience loss or gain.

19 “(5) FULL FUNDING.—If, as of the close of a
20 plan year, a plan would (without regard to this para-
21 graph) have an accumulated funding deficiency in
22 excess of the full funding limitation—

23 “(A) the funding standard account shall be
24 credited with the amount of such excess, and

1 “(B) all amounts described in subpara-
2 graphs (B), (C), and (D) of subsection (b) (2)
3 and subparagraph (B) of subsection (b)(3)
4 which are required to be amortized shall be con-
5 sidered fully amortized for purposes of such
6 subparagraphs.

7 “(6) FULL-FUNDING LIMITATION.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (5), the term ‘full-funding limitation’
10 means the excess (if any) of—

11 “(i) the accrued liability (including
12 normal cost) under the plan (determined
13 under the entry age normal funding meth-
14 od if such accrued liability cannot be di-
15 rectly calculated under the funding method
16 used for the plan), over

17 “(ii) the lesser of—

18 “(I) the fair market value of the
19 plan’s assets, or

20 “(II) the value of such assets de-
21 termined under paragraph (2).

22 “(B) MINIMUM AMOUNT.—

23 “(i) IN GENERAL.—In no event shall
24 the full-funding limitation determined

1 under subparagraph (A) be less than the
2 excess (if any) of—

3 “(I) 90 percent of the current li-
4 ability of the plan (including the ex-
5 pected increase in current liability due
6 to benefits accruing during the plan
7 year), over

8 “(II) the value of the plan’s as-
9 sets determined under paragraph (2).

10 “(ii) ASSETS.—For purposes of clause
11 (i), assets shall not be reduced by any
12 credit balance in the funding standard ac-
13 count.

14 “(C) FULL FUNDING LIMITATION.—For
15 purposes of this paragraph, unless otherwise
16 provided by the plan, the accrued liability under
17 a multiemployer plan shall not include benefits
18 which are not nonforfeitable under the plan
19 after the termination of the plan (taking into
20 consideration section 411(d)(3) of the Internal
21 Revenue Code of 1986).

22 “(D) CURRENT LIABILITY.—For purposes
23 of this paragraph—

1 “(i) IN GENERAL.—The term ‘current
2 liability’ means all liabilities to employees
3 and their beneficiaries under the plan.

4 “(ii) TREATMENT OF UNPREDICTABLE
5 CONTINGENT EVENT BENEFITS.—For pur-
6 poses of clause (i), any benefit contingent
7 on an event other than—

8 “(I) age, service, compensation,
9 death, or disability, or

10 “(II) an event which is reason-
11 ably and reliably predictable (as deter-
12 mined by the Secretary of the Treas-
13 ury),

14 shall not be taken into account until the
15 event on which the benefit is contingent oc-
16 curs.

17 “(iii) INTEREST RATE USED.—The
18 rate of interest used to determine current
19 liability under this paragraph shall be the
20 rate of interest determined under subpara-
21 graph (E).

22 “(iv) MORTALITY TABLES.—

23 “(I) COMMISSIONERS’ STANDARD
24 TABLE.—In the case of plan years be-
25 ginning before the first plan year to

1 which the first tables prescribed under
2 subclause (II) apply, the mortality
3 table used in determining current li-
4 ability under this paragraph shall be
5 the table prescribed by the Secretary
6 of the Treasury which is based on the
7 prevailing commissioners' standard
8 table (described in section
9 807(d)(5)(A) of the Internal Revenue
10 Code of 1986) used to determine re-
11 serves for group annuity contracts
12 issued on January 1, 1993.

13 “(II) SECRETARIAL AUTHOR-
14 ITY.—The Secretary of the Treasury
15 may by regulation prescribe for plan
16 years beginning after December 31,
17 1999, mortality tables to be used in
18 determining current liability under
19 this subsection. Such tables shall be
20 based upon the actual experience of
21 pension plans and projected trends in
22 such experience. In prescribing such
23 tables, such Secretary shall take into
24 account results of available inde-

1 dividuals described in such subclause
2 who are disabled within the meaning
3 of title II of the Social Security Act
4 and the regulations thereunder.

5 “(vi) PERIODIC REVIEW.—The Sec-
6 retary of the Treasury shall periodically (at
7 least every 5 years) review any tables in ef-
8 fect under this subparagraph and shall, to
9 the extent such Secretary determines nec-
10 essary, by regulation update the tables to
11 reflect the actual experience of pension
12 plans and projected trends in such experi-
13 ence.

14 “(E) REQUIRED CHANGE OF INTEREST
15 RATE.—For purposes of determining a plan’s
16 current liability for purposes of this
17 paragraph—

18 “(i) IN GENERAL.—If any rate of in-
19 terest used under the plan under sub-
20 section (b)(6) to determine cost is not
21 within the permissible range, the plan shall
22 establish a new rate of interest within the
23 permissible range.

24 “(ii) PERMISSIBLE RANGE.—For pur-
25 poses of this subparagraph—

1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), the term
3 ‘permissible range’ means a rate of in-
4 terest which is not more than 5 per-
5 cent above, and not more than 10 per-
6 cent below, the weighted average of
7 the rates of interest on 30-year Treas-
8 ury securities during the 4-year period
9 ending on the last day before the be-
10 ginning of the plan year.

11 “(II) SECRETARIAL AUTHOR-
12 ITY.—If the Secretary of the Treasury
13 finds that the lowest rate of interest
14 permissible under subclause (I) is un-
15 reasonably high, such Secretary may
16 prescribe a lower rate of interest, ex-
17 cept that such rate may not be less
18 than 80 percent of the average rate
19 determined under such subclause.

20 “(iii) ASSUMPTIONS.—Notwith-
21 standing paragraph (3)(A), the interest
22 rate used under the plan shall be—

23 “(I) determined without taking
24 into account the experience of the
25 plan and reasonable expectations, but

1 “(II) consistent with the assump-
2 tions which reflect the purchase rates
3 which would be used by insurance
4 companies to satisfy the liabilities
5 under the plan.

6 “(7) ANNUAL VALUATION.—

7 “(A) IN GENERAL.—For purposes of this
8 section, a determination of experience gains and
9 losses and a valuation of the plan’s liability
10 shall be made not less frequently than once
11 every year, except that such determination shall
12 be made more frequently to the extent required
13 in particular cases under regulations prescribed
14 by the Secretary of the Treasury.

15 “(B) VALUATION DATE.—

16 “(i) CURRENT YEAR.—Except as pro-
17 vided in clause (ii), the valuation referred
18 to in subparagraph (A) shall be made as of
19 a date within the plan year to which the
20 valuation refers or within one month prior
21 to the beginning of such year.

22 “(ii) USE OF PRIOR YEAR VALU-
23 ATION.—The valuation referred to in sub-
24 paragraph (A) may be made as of a date
25 within the plan year prior to the year to

1 which the valuation refers if, as of such
2 date, the value of the assets of the plan are
3 not less than 100 percent of the plan's cur-
4 rent liability (as defined in paragraph
5 (6)(D) without regard to clause (iv) there-
6 of).

7 “(iii) ADJUSTMENTS.—Information
8 under clause (ii) shall, in accordance with
9 regulations, be actuarially adjusted to re-
10 flect significant differences in participants.

11 “(iv) LIMITATION.—A change in fund-
12 ing method to use a prior year valuation,
13 as provided in clause (ii), may not be made
14 unless as of the valuation date within the
15 prior plan year, the value of the assets of
16 the plan are not less than 125 percent of
17 the plan's current liability (as defined in
18 paragraph (6)(D) without regard to clause
19 (iv) thereof).

20 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
21 DEEMED MADE.—For purposes of this section, any
22 contributions for a plan year made by an employer
23 after the last day of such plan year, but not later
24 than two and one-half months after such day, shall
25 be deemed to have been made on such last day. For

1 purposes of this subparagraph, such two and one-
2 half month period may be extended for not more
3 than six months under regulations prescribed by the
4 Secretary of the Treasury.

5 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
6 MULTIEMPLOYER PLANS.—

7 “(1) AUTOMATIC EXTENSION UPON APPLICA-
8 TION BY CERTAIN PLANS.—

9 “(A) IN GENERAL.—If the plan sponsor of
10 a multiemployer plan—

11 “(i) submits to the Secretary of the
12 Treasury an application for an extension of
13 the period of years required to amortize
14 any unfunded liability described in any
15 clause of subsection (b)(2)(B) or described
16 in subsection (b)(4), and

17 “(ii) includes with the application a
18 certification by the plan’s actuary de-
19 scribed in subparagraph (B),

20 the Secretary of the Treasury shall extend the
21 amortization period for the period of time (not
22 in excess of 5 years) specified in the applica-
23 tion. Such extension shall be in addition to any
24 extension under paragraph (2).

1 “(B) CRITERIA.—A certification with re-
2 spect to a multiemployer plan is described in
3 this subparagraph if the plan’s actuary certifies
4 that, based on reasonable assumptions—

5 “(i) absent the extension under sub-
6 paragraph (A), the plan would have an ac-
7 cumulated funding deficiency in the cur-
8 rent plan year or any of the 9 succeeding
9 plan years,

10 “(ii) the plan sponsor has adopted a
11 plan to improve the plan’s funding status,

12 “(iii) the plan is projected to have suf-
13 ficient assets to timely pay expected bene-
14 fits and anticipated expenditures over the
15 amortization period as extended, and

16 “(iv) the notice required under para-
17 graph (3)(A) has been provided.

18 “(2) ADDITIONAL EXTENSION.—

19 “(A) IN GENERAL.—If the plan sponsor of
20 a multiemployer plan submits to the Secretary
21 of the Treasury an application for an extension
22 of the period of years required to amortize any
23 unfunded liability described in any clause of
24 subsection (b)(2)(B) or described in subsection
25 (b)(4), the Secretary of the Treasury may ex-

1 tend the amortization period for a period of
2 time (not in excess of 5 years) if the Secretary
3 of the Treasury makes the determination de-
4 scribed in subparagraph (B). Such extension
5 shall be in addition to any extension under
6 paragraph (1).

7 “(B) DETERMINATION.—The Secretary
8 make grant an extension under subparagraph
9 (A) if the Secretary determines that—

10 “(i) such extension would carry out
11 the purposes of this Act and would provide
12 adequate protection for participants under
13 the plan and their beneficiaries, and

14 “(ii) the failure to permit such exten-
15 sion would—

16 “(I) result in a substantial risk
17 to the voluntary continuation of the
18 plan, or a substantial curtailment of
19 pension benefit levels or employee
20 compensation, and

21 “(II) be adverse to the interests
22 of plan participants in the aggregate.

23 “(C) ACTION BY SECRETARY.—The Sec-
24 retary of the Treasury shall act upon any appli-
25 cation for an extension under this paragraph

1 within 180 days of the submission of such ap-
2 plication. If the Secretary rejects the applica-
3 tion for an extension under this paragraph, the
4 Secretary shall provide notice to the plan detail-
5 ing the specific reasons for the rejection, includ-
6 ing references to the criteria set forth above.

7 “(3) ADVANCE NOTICE.—

8 “(A) IN GENERAL.—The Secretary of the
9 Treasury shall, before granting an extension
10 under this subsection, require each applicant to
11 provide evidence satisfactory to such Secretary
12 that the applicant has provided notice of the fil-
13 ing of the application for such extension to each
14 affected party (as defined in section
15 4001(a)(21)) with respect to the affected plan.
16 Such notice shall include a description of the
17 extent to which the plan is funded for benefits
18 which are guaranteed under title IV and for
19 benefit liabilities.

20 “(B) CONSIDERATION OF RELEVANT IN-
21 FORMATION.—The Secretary of the Treasury
22 shall consider any relevant information provided
23 by a person to whom notice was given under
24 paragraph (1).”.

25 (b) SHORTFALL FUNDING METHOD.—

1 (1) IN GENERAL.—A multiemployer plan meet-
2 ing the criteria of paragraph (2) may adopt, use, or
3 cease using, the shortfall funding method and such
4 adoption, use, or cessation of use of such method,
5 shall be deemed approved by the Secretary of the
6 Treasury under section 302(d)(1) of the Employee
7 Retirement Income Security Act of 1974 and section
8 412(e)(1) of the Internal Revenue Code of 1986.

9 (2) CRITERIA.—A multiemployer pension plan
10 meets the criteria of this clause if—

11 (A) the plan has not used the shortfall
12 funding method during the 5-year period ending
13 on the day before the date the plan is to use
14 the method under paragraph (1); and

15 (B) the plan is not operating under an am-
16 ortization period extension under section 304(d)
17 of such Act and did not operate under such an
18 extension during such 5-year period.

19 (3) SHORTFALL FUNDING METHOD DEFINED.—
20 For purposes of this subsection, the term “shortfall
21 funding method” means the shortfall funding meth-
22 od described in Treasury Regulations section
23 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

24 (4) BENEFIT RESTRICTIONS TO APPLY.—The
25 benefit restrictions under section 302(c)(7) of such

1 Act and section 412(d)(7) of such Code shall apply
2 during any period a multiemployer plan is on the
3 shortfall funding method pursuant to this sub-
4 section.

5 (5) USE OF SHORTFALL METHOD NOT TO PRE-
6 CLUDE OTHER OPTIONS.—Nothing in this subsection
7 shall be construed to affect a multiemployer plan’s
8 ability to adopt the shortfall funding method with
9 the Secretary’s permission under otherwise applica-
10 ble regulations or to affect a multiemployer plan’s
11 right to change funding methods, with or without
12 the Secretary’s consent, as provided in applicable
13 rules and regulations.

14 (c) CONFORMING AMENDMENTS.—

15 (1) Section 301 of the Employee Retirement In-
16 come Security Act of 1974 (29 U.S.C. 1081) is
17 amended by striking subsection (d).

18 (2) The table of contents in section 1 of such
19 Act (as amended by this Act) is amended by insert-
20 ing after the item relating to section 303 the fol-
21 lowing new item:

“Sec. 304. Minimum funding standards for multiemployer plans.”.

22 (d) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
24 this section shall apply to plan years beginning after
25 2006.

1 (2) SPECIAL RULE FOR CERTAIN AMORTIZATION
2 EXTENSIONS.—If the Secretary of the Treasury
3 grants an extension under section 304 of the Em-
4 ployee Retirement Income Security Act of 1974 and
5 section 412(e) of the Internal Revenue Code of 1986
6 with respect to any application filed with the Sec-
7 retary of the Treasury on or before June 30, 2005,
8 the extension (and any modification thereof) shall be
9 applied and administered under the rules of such
10 sections as in effect before the enactment of this
11 Act, including the use of the rate of interest deter-
12 mined under section 6621(b) of such Code.

13 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**
14 **PLOYER PLANS IN ENDANGERED OR CRIT-**
15 **ICAL STATUS.**

16 (a) IN GENERAL.—Part 3 of subtitle B of title I of
17 the Employee Retirement Income Security Act of 1974 (as
18 amended by the preceding provisions of this Act) is
19 amended by inserting after section 304 the following new
20 section:

21 “ADDITIONAL FUNDING RULES FOR MULTIEmployer
22 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

23 “SEC. 305. (a) GENERAL RULE.—For purposes of
24 this part, in the case of a multiemployer plan—

25 “(1) if the plan is in endangered status—

1 “(A) the plan sponsor shall adopt and im-
2 plement a funding improvement plan in accord-
3 ance with the requirements of subsection (c),
4 and

5 “(B) the requirements of subsection (d)
6 shall apply during the funding plan adoption
7 period and the funding improvement period,
8 and

9 “(2) if the plan is in critical status—

10 “(A) the plan sponsor shall adopt and im-
11 plement a rehabilitation plan in accordance with
12 the requirements of subsection (e), and

13 “(B) the requirements of subsection (f)
14 shall apply during the rehabilitation plan adop-
15 tion period and the rehabilitation period.

16 “(b) DETERMINATION OF ENDANGERED AND CRIT-
17 ICAL STATUS.—For purposes of this section—

18 “(1) ENDANGERED STATUS.—A multiemployer
19 plan is in endangered status for a plan year if, as
20 determined by the plan actuary under paragraph
21 (3), the plan is not in critical status for the plan
22 year and either—

23 “(A) the plan’s funded percentage for such
24 plan year is less than 80 percent, or

1 “(B) the plan has an accumulated funding
2 deficiency for such plan year, or is projected to
3 have such an accumulated funding deficiency
4 for any of the 6 succeeding plan years, taking
5 into account any extension of amortization peri-
6 ods under section 304(d).

7 For purposes of this section, a plan described in
8 subparagraph (B) shall be treated as in seriously en-
9 dangered status.

10 “(2) CRITICAL STATUS.—A multiemployer plan
11 is in critical status for a plan year if, as determined
12 by the plan actuary under paragraph (3), the plan
13 is described in 1 or more of the following subpara-
14 graphs as of the beginning of the plan year:

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

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

19 “(ii) the sum of—

20 “(I) the market value of plan as-
21 sets, plus

22 “(II) the present value of the
23 reasonably anticipated employer con-
24 tributions for the current plan year
25 and each of the 5 succeeding plan

1 years, assuming that the terms of all
2 collective bargaining agreements pur-
3 suant to which the plan is maintained
4 for the current plan year continue in
5 effect for succeeding plan years,
6 is less than the present value of all benefits
7 projected to be payable under the plan dur-
8 ing the current plan year and each of the
9 5 succeeding plan years (plus administra-
10 tive expenses for such plan years).

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

13 “(i) the plan has an accumulated
14 funding deficiency for the current plan
15 year, not taking into account any extension
16 of amortization periods under section
17 304(d), or

18 “(ii) the plan is projected to have an
19 accumulated funding deficiency for any of
20 the 3 succeeding plan years (4 succeeding
21 plan years if the funded percentage of the
22 plan is 65 percent or less), not taking into
23 account any extension of amortization peri-
24 ods under section 304(d).

1 “(C) A plan is described in this subpara-
2 graph if—

3 “(i)(I) the plan’s normal cost for the
4 current plan year, plus interest (deter-
5 mined at the rate used for determining
6 costs under the plan) for the current plan
7 year on the amount of unfunded benefit li-
8 abilities under the plan as of the last date
9 of the preceding plan year, exceeds

10 “(II) the present value of the reason-
11 ably anticipated employer contributions for
12 the current plan year,

13 “(ii) the present value of nonforfeit-
14 able benefits of inactive participants is
15 greater than the present value of non-
16 forfeitable benefits of active participants,
17 and

18 “(iii) the plan has an accumulated
19 funding deficiency for the current plan
20 year, or is projected to have such a defi-
21 ciency for any of the 4 succeeding plan
22 years, not taking into account any exten-
23 sion of amortization periods under section
24 304(d).

1 “(D) A plan is described in this subpara-
2 graph if the sum of—

3 “(i) the market value of plan assets,
4 plus

5 “(ii) the present value of the reason-
6 ably anticipated employer contributions for
7 the current plan year and each of the 4
8 succeeding plan years, assuming that the
9 terms of all collective bargaining agree-
10 ments pursuant to which the plan is main-
11 tained for the current plan year continue
12 in effect for succeeding plan years,

13 is less than the present value of all benefits pro-
14 jected to be payable under the plan during the
15 current plan year and each of the 4 succeeding
16 plan years (plus administrative expenses for
17 such plan years).

18 “(3) ANNUAL CERTIFICATION BY PLAN ACTU-
19 ARY.—

20 “(A) IN GENERAL.—During the 90-day pe-
21 riod beginning on the first day of each plan
22 year of a multiemployer plan, the plan actuary
23 shall certify to the Secretary of the Treasury—

24 “(i) whether or not the plan is in en-
25 dangered status for such plan year and

1 whether or not the plan is in critical status
2 for such plan year, and

3 “(ii) in the case of a plan which is in
4 a funding improvement or rehabilitation
5 period, whether or not the plan is making
6 the scheduled progress in meeting the re-
7 quirements of its funding improvement or
8 rehabilitation plan.

9 “(B) ACTUARIAL PROJECTIONS OF ASSETS
10 AND LIABILITIES.—

11 “(i) IN GENERAL.—In making the de-
12 terminations and projections under this
13 subsection, the plan actuary shall make
14 projections required for the current and
15 succeeding plan years, using reasonable ac-
16 tuarial estimates, assumptions, and meth-
17 ods, of the current value of the assets of
18 the plan and the present value of all liabil-
19 ities to participants and beneficiaries under
20 the plan for the current plan year as of the
21 beginning of such year. The projected
22 present value of liabilities as of the begin-
23 ning of such year shall be determined
24 based on the actuarial statement required
25 under section 103(d) with respect to the

1 most recently filed annual report or the ac-
2 tuarial valuation for the preceding plan
3 year.

4 “(ii) DETERMINATIONS OF FUTURE
5 CONTRIBUTIONS.—Any actuarial projection
6 of plan assets shall assume—

7 “(I) reasonably anticipated em-
8 ployer contributions for the current
9 and succeeding plan years, assuming
10 that the terms of the one or more col-
11 lective bargaining agreements pursu-
12 ant to which the plan is maintained
13 for the current plan year continue in
14 effect for succeeding plan years, or

15 “(II) that employer contributions
16 for the most recent plan year will con-
17 tinue indefinitely, but only if the plan
18 actuary determines there have been no
19 significant demographic changes that
20 would make such assumption unrea-
21 sonable.

22 “(C) PENALTY FOR FAILURE TO SECURE
23 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
24 ure of the plan’s actuary to certify the plan’s
25 status under this subsection by the date speci-

1 fied in subparagraph (A) shall be treated for
2 purposes of section 502(c)(2) as a failure or re-
3 fusals by the plan administrator to file the an-
4 nual report required to be filed with the Sec-
5 retary under section 101(b)(4).

6 “(D) NOTICE.—In any case in which a
7 multiemployer plan is certified to be in endan-
8 gered or critical status under subparagraph (A),
9 the plan sponsor shall, not later than 30 days
10 after the date of the certification, provide notifi-
11 cation of the endangered or critical status to
12 the participants and beneficiaries, the bar-
13 gaining parties, the Pension Benefit Guaranty
14 Corporation, the Secretary of the Treasury, and
15 the Secretary.

16 “(c) FUNDING IMPROVEMENT PLAN MUST BE
17 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
18 STATUS.—

19 “(1) IN GENERAL.—In any case in which a
20 multiemployer plan is in endangered status for a
21 plan year, the plan sponsor, in accordance with this
22 subsection—

23 “(A) shall adopt a funding improvement
24 plan not later than 240 days following the re-
25 quired date for the actuarial certification of en-

1 dangered status under subsection (b)(3)(A),
2 and

3 “(B) within 30 days after the adoption of
4 the funding improvement plan—

5 “(i) in the case of a plan in seriously
6 endangered status, shall provide to the
7 bargaining parties 1 or more schedules
8 showing revised benefit structures, revised
9 contribution structures, or both, which, if
10 adopted, may reasonably be expected to en-
11 able the multiemployer plan to meet the
12 applicable requirements under paragraph
13 (3) in accordance with the funding im-
14 provement plan, including a description of
15 the reductions in future benefit accruals
16 and increases in contributions that the
17 plan sponsor determines are reasonably
18 necessary to meet the applicable require-
19 ments if the plan sponsor assumes that
20 there are no increases in contributions
21 under the plan other than the increases
22 necessary to meet the applicable require-
23 ments after future benefit accruals have
24 been reduced to the maximum extent per-
25 mitted by law, and

1 “(ii) may, if the plan sponsor deems
2 appropriate, prepare and provide the bar-
3 gaining parties with additional information
4 relating to contribution rates or benefit re-
5 ductions, alternative schedules, or other in-
6 formation relevant to achieving the re-
7 quirements under paragraph (3) in accord-
8 ance with the funding improvement plan.

9 “(2) EXCEPTION FOR YEARS AFTER PROCESS
10 BEGINS.—Paragraph (1) shall not apply to a plan
11 year if such year is in a funding plan adoption pe-
12 riod or funding improvement period by reason of the
13 plan being in endangered status for a preceding plan
14 year. For purposes of this section, such preceding
15 plan year shall be the initial determination year with
16 respect to the funding improvement plan to which it
17 relates.

18 “(3) FUNDING IMPROVEMENT PLAN.—For pur-
19 poses of this section—

20 “(A) IN GENERAL.—A funding improve-
21 ment plan is a plan which consists of the ac-
22 tions, including options or a range of options to
23 be proposed to the bargaining parties, which,
24 under reasonable actuarial assumptions, will re-

1 sult in the plan meeting the requirements of
2 this paragraph.

3 “(B) PLANS OTHER THAN SERIOUSLY EN-
4 DANGERED PLANS.—In the case of plan not in
5 seriously endangered status, the requirements
6 of this paragraph are met if the plan’s funded
7 percentage as of the close of the funding im-
8 provement period exceeds the lesser of 80 per-
9 cent or a percentage equal to the sum of—

10 “(i) such percentage as of the begin-
11 ning of such period, plus

12 “(ii) 10 percent of the percentage
13 under clause (i).

14 “(C) SERIOUSLY ENDANGERED PLANS.—
15 In the case of a plan in seriously endangered
16 status, the requirements of this paragraph are
17 met if—

18 “(i) the plan’s funded percentage as
19 of the close of the funding improvement
20 period equals or exceeds the percentage
21 which is equal to the sum of—

22 “(I) such percentage as of the
23 beginning of such period, plus

1 “(II) 33 percent of the difference
2 between 100 percent and the percent-
3 age under subclause (I), and

4 “(ii) there is no accumulated funding
5 deficiency for any plan year during the
6 funding improvement period (taking into
7 account any extension of amortization peri-
8 ods under section 304(d)).

9 “(4) FUNDING IMPROVEMENT PERIOD.—For
10 purposes of this section—

11 “(A) IN GENERAL.—The funding improve-
12 ment period for any funding improvement plan
13 adopted pursuant to this subsection is the 10-
14 year period beginning on the first day of the
15 first plan year of the multiemployer plan begin-
16 ning after the earlier of—

17 “(i) the second anniversary of the
18 date of the adoption of the funding im-
19 provement plan, or

20 “(ii) the expiration of the collective
21 bargaining agreements in effect on the due
22 date for the actuarial certification of en-
23 dangered status for the initial determina-
24 tion year under subsection (b)(3)(A) and
25 covering, as of such due date, at least 75

1 percent of the active participants in such
2 multiemployer plan.

3 “(B) COORDINATION WITH CHANGES IN
4 STATUS.—

5 “(i) PLANS NO LONGER IN ENDAN-
6 GERED STATUS.—If the plan’s actuary cer-
7 tifies under subsection (b)(3)(A) for a plan
8 year in any funding plan adoption period
9 or funding improvement period that the
10 plan is no longer in endangered status and
11 is not in critical status, the funding plan
12 adoption period or funding improvement
13 period, whichever is applicable, shall end as
14 of the close of the preceding plan year.

15 “(ii) PLANS IN CRITICAL STATUS.—If
16 the plan’s actuary certifies under sub-
17 section (b)(3)(A) for a plan year in any
18 funding plan adoption period or funding
19 improvement period that the plan is in
20 critical status, the funding plan adoption
21 period or funding improvement period,
22 whichever is applicable, shall end as of the
23 close of the plan year preceding the first
24 plan year in the rehabilitation period with
25 respect to such status.

1 period must equal or exceed a percentage
2 which is equal to the sum of—

3 “(I) such percentage as of the
4 beginning of such period, plus

5 “(II) 20 percent of the difference
6 between 100 percent and the percent-
7 age under subclause (I).

8 “(ii) The funding improvement period
9 under paragraph (4)(A) shall be 15 years
10 rather than 10 years.

11 “(B) SPECIAL RULES FOR PLANS WITH
12 FUNDED PERCENTAGE OVER 70 PERCENT.—If
13 the funded percentage described in subpara-
14 graph (A) was more than 70 percent but less
15 than 80 percent as of the beginning of the ini-
16 tial determination year—

17 “(i) subparagraph (A) shall apply if
18 the plan’s actuary certifies, within 30 days
19 after the certification under subsection
20 (b)(3)(A) for the initial determination
21 year, that, based on the terms of the plan
22 and the collective bargaining agreements in
23 effect at the time of such certification, the
24 plan is not projected to meet the require-

1 ments of paragraph (3)(C)(i) without re-
2 gard to this paragraph, and

3 “(ii) if there is a certification under
4 clause (i), the plan may, in formulating its
5 funding improvement plan, only take into
6 account the rules of subparagraph (A) for
7 plan years in the funding improvement pe-
8 riod beginning on or before the date on
9 which the last of the collective bargaining
10 agreements described in paragraph
11 (4)(A)(ii) expires.

12 Notwithstanding clause (ii), if for any plan year
13 ending after the date described in clause (ii) the
14 plan actuary certifies (at the time of the annual
15 certification under subsection (b)(3)(A) for such
16 plan year) that, based on the terms of the plan
17 and collective bargaining agreements in effect
18 at the time of that annual certification, the plan
19 is not projected to be able to meet the require-
20 ments of paragraph (3)(C)(i) without regard to
21 this paragraph, the plan may continue to as-
22 sume for such year that the funding improve-
23 ment period is 15 years rather than 10 years.

24 “(6) UPDATES TO FUNDING IMPROVEMENT
25 PLAN AND SCHEDULES.—

1 “(A) FUNDING IMPROVEMENT PLAN.—The
2 plan sponsor shall annually update the funding
3 improvement plan and shall file the update with
4 the plan’s annual report under section 104.

5 “(B) SCHEDULES.—The plan sponsor may
6 periodically update any schedule of contribution
7 rates provided under this subsection to reflect
8 the experience of the plan, except that the
9 schedule or schedules described in paragraph
10 (1)(B)(i) shall be updated at least once every 3
11 years.

12 “(C) DURATION OF SCHEDULE.—A sched-
13 ule of contribution rates provided by the plan
14 sponsor and relied upon by bargaining parties
15 in negotiating a collective bargaining agreement
16 shall remain in effect for the duration of that
17 collective bargaining agreement.

18 “(7) PENALTY IF NO FUNDING IMPROVEMENT
19 PLAN ADOPTED.—A failure of the plan sponsor to
20 adopt a funding improvement plan by the date speci-
21 fied in paragraph (1)(A) shall be treated for pur-
22 poses of section 502(c)(2) as a failure or refusal by
23 the plan administrator to file the annual report re-
24 quired to be filed with the Secretary under section
25 101(b)(4).

1 “(8) FUNDING PLAN ADOPTION PERIOD.—For
2 purposes of this section, the term ‘funding plan
3 adoption period’ means the period beginning on the
4 date of the certification under subsection (b)(3)(A)
5 for the initial determination year and ending on the
6 day before the first day of the funding improvement
7 period.

8 “(d) RULES FOR OPERATION OF PLAN DURING
9 ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO
10 MEET REQUIREMENTS.—

11 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-
12 RIOD.—During the plan adoption period—

13 “(A) the plan sponsor may not accept a
14 collective bargaining agreement or participation
15 agreement with respect to the multiemployer
16 plan that provides for—

17 “(i) a reduction in the level of con-
18 tributions for any participants,

19 “(ii) a suspension of contributions
20 with respect to any period of service, or

21 “(iii) any new direct or indirect exclu-
22 sion of younger or newly hired employees
23 from plan participation,

24 “(B) no amendment of the plan which in-
25 creases the liabilities of the plan by reason of

1 any increase in benefits, any change in the ac-
2 cural of benefits, or any change in the rate at
3 which benefits become nonforfeitable under the
4 plan may be adopted unless the amendment is
5 required as a condition of qualification under
6 part I of subchapter D of chapter 1 of the In-
7 ternal Revenue Code of 1986 or to comply with
8 other applicable law, and

9 “(C) in the case of a plan in seriously en-
10 dangered status, the plan sponsor shall take all
11 reasonable actions which are consistent with the
12 terms of the plan and applicable law and which
13 are expected, based on reasonable assumptions,
14 to achieve—

15 “(i) an increase in the plan’s funded
16 percentage, and

17 “(ii) postponement of an accumulated
18 funding deficiency for at least 1 additional
19 plan year.

20 Actions under subparagraph (C) include applications
21 for extensions of amortization periods under section
22 304(d), use of the shortfall funding method in mak-
23 ing funding standard account computations, amend-
24 ments to the plan’s benefit structure, reductions in
25 future benefit accruals, and other reasonable actions

1 consistent with the terms of the plan and applicable
2 law.

3 “(2) COMPLIANCE WITH FUNDING IMPROVE-
4 MENT PLAN.—

5 “(A) IN GENERAL.—A plan may not be
6 amended after the date of the adoption of a
7 funding improvement plan under subsection (c)
8 so as to be inconsistent with the funding im-
9 provement plan.

10 “(B) NO REDUCTION IN CONTRIBU-
11 TIONS.—A plan sponsor may not during any
12 funding improvement period accept a collective
13 bargaining agreement or participation agree-
14 ment with respect to the multiemployer plan
15 that provides for—

16 “(i) a reduction in the level of con-
17 tributions for any participants,

18 “(ii) a suspension of contributions
19 with respect to any period of service, or

20 “(iii) any new direct or indirect exclu-
21 sion of younger or newly hired employees
22 from plan participation.

23 “(C) SPECIAL RULES FOR BENEFIT IN-
24 CREASES.—A plan may not be amended after
25 the date of the adoption of a funding improve-

1 ment plan under subsection (c) so as to in-
2 crease benefits, including future benefit accru-
3 als, unless—

4 “(i) in the case of a plan in seriously
5 endangered status, the plan actuary cer-
6 tifies that, after taking into account the
7 benefit increase, the plan is still reasonably
8 expected to meet the requirements under
9 subsection (c)(3) in accordance with the
10 schedule contemplated in the funding im-
11 provement plan, and

12 “(ii) in the case of a plan not in seri-
13 ously endangered status, the actuary cer-
14 tifies that such increase is paid for out of
15 contributions not required by the funding
16 improvement plan to meet the require-
17 ments under subsection (c)(3) in accord-
18 ance with the schedule contemplated in the
19 funding improvement plan.

20 “(3) FAILURE TO MEET REQUIREMENTS.—

21 “(A) IN GENERAL.—Notwithstanding sec-
22 tion 4971(g) of the Internal Revenue Code of
23 1986, if a plan fails to meet the requirements
24 of subsection (c)(3) by the end of the funding
25 improvement period, the plan shall be treated

1 as having an accumulated funding deficiency
2 for purposes of section 4971 of such Code for
3 the last plan year in such period (and each suc-
4 ceeding plan year until such requirements are
5 met) in an amount equal to the greater of the
6 amount of the contributions necessary to meet
7 such requirements or the amount of such accu-
8 mulated funding deficiency without regard to
9 this paragraph.

10 “(B) WAIVER.—In the case of a failure de-
11 scribed in subparagraph (A) which is due to
12 reasonable cause and not to willful neglect, the
13 Secretary of the Treasury may waive part or all
14 of the tax imposed by section 4971 of such
15 Code to the extent that the payment of such tax
16 would be excessive or otherwise inequitable re-
17 lative to the failure involved.

18 “(e) REHABILITATION PLAN MUST BE ADOPTED
19 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

20 “(1) IN GENERAL.—In any case in which a
21 multiemployer plan is in critical status for a plan
22 year, the plan sponsor, in accordance with this
23 subsection—

24 “(A) shall adopt a rehabilitation plan not
25 later than 240 days following the required date

1 for the actuarial certification of critical status
2 under subsection (b)(3)(A), and

3 “(B) within 30 days after the adoption of
4 the rehabilitation plan—

5 “(i) shall provide to the bargaining
6 parties 1 or more schedules showing re-
7 vised benefit structures, revised contribu-
8 tion structures, or both, which, if adopted,
9 may reasonably be expected to enable the
10 multiemployer plan to emerge from critical
11 status in accordance with the rehabilitation
12 plan, and

13 “(ii) may, if the plan sponsor deems
14 appropriate, prepare and provide the bar-
15 gaining parties with additional information
16 relating to contribution rates or benefit re-
17 ductions, alternative schedules, or other in-
18 formation relevant to emerging from crit-
19 ical status in accordance with the rehabili-
20 tation plan.

21 The schedule or schedules described in subparagraph
22 (B)(i) shall reflect reductions in future benefit ac-
23 cruals and increases in contributions that the plan
24 sponsor determines are reasonably necessary to
25 emerge from critical status. One schedule shall be

1 designated as the default schedule and such schedule
2 shall assume that there are no increases in contribu-
3 tions under the plan other than the increases nec-
4 essary to emerge from critical status after future
5 benefit accruals and other benefits (other than bene-
6 fits the reduction or elimination of which are not
7 permitted under section 204(g)) have been reduced
8 to the maximum extent permitted by law.

9 “(2) EXCEPTION FOR YEARS AFTER PROCESS
10 BEGINS.—Paragraph (1) shall not apply to a plan
11 year if such year is in a rehabilitation plan adoption
12 period or rehabilitation period by reason of the plan
13 being in critical status for a preceding plan year.
14 For purposes of this section, such preceding plan
15 year shall be the initial critical year with respect to
16 the rehabilitation plan to which it relates.

17 “(3) REHABILITATION PLAN.—For purposes of
18 this section—

19 “(A) IN GENERAL.—A rehabilitation plan
20 is a plan which consists of—

21 “(i) actions which will enable, under
22 reasonable actuarial assumptions, the plan
23 to cease to be in critical status by the end
24 of the rehabilitation period and may in-
25 clude reductions in plan expenditures (in-

1 cluding plan mergers and consolidations),
2 reductions in future benefit accruals or in-
3 creases in contributions, if agreed to by the
4 bargaining parties, or any combination of
5 such actions, or

6 “(ii) if the plan sponsor determines
7 that, based on reasonable actuarial as-
8 sumptions and upon exhaustion of all rea-
9 sonable measures, the plan can not reason-
10 ably be expected to emerge from critical
11 status by the end of the rehabilitation pe-
12 riod, reasonable measures to emerge from
13 critical status at a later time or to forestall
14 possible insolvency (within the meaning of
15 section 4245).

16 Such plan shall include the schedules required
17 to be provided under paragraph (1)(B)(i). If
18 clause (ii) applies, such plan shall set forth the
19 alternatives considered, explain why the plan is
20 not reasonably expected to emerge from critical
21 status by the end of the rehabilitation period,
22 and specify when, if ever, the plan is expected
23 to emerge from critical status in accordance
24 with the rehabilitation plan.

1 “(B) UPDATES TO REHABILITATION PLAN
2 AND SCHEDULES.—

3 “(i) REHABILITATION PLAN.—The
4 plan sponsor shall annually update the re-
5 habilitation plan and shall file the update
6 with the plan’s annual report under section
7 104.

8 “(ii) SCHEDULES.—The plan sponsor
9 may periodically update any schedule of
10 contribution rates provided under this sub-
11 section to reflect the experience of the
12 plan, except that the schedule or schedules
13 described in paragraph (1)(B)(i) shall be
14 updated at least once every 3 years.

15 “(iii) DURATION OF SCHEDULE.—A
16 schedule of contribution rates provided by
17 the plan sponsor and relied upon by bar-
18 gaining parties in negotiating a collective
19 bargaining agreement shall remain in ef-
20 fect for the duration of that collective bar-
21 gaining agreement.

22 “(C) DEFAULT SCHEDULE.—If the collec-
23 tive bargaining agreement providing for con-
24 tributions under a multiemployer plan that was
25 in effect at the time the plan entered critical

1 status expires and, after receiving a schedule
2 from the plan sponsor under paragraph
3 (1)(B)(i), the bargaining parties have not
4 adopted a collective bargaining agreement with
5 terms consistent with such a schedule, the de-
6 fault schedule described in the last sentence of
7 paragraph (1) shall go into effect with respect
8 to those bargaining parties.

9 “(4) REHABILITATION PERIOD.—For purposes
10 of this section—

11 “(A) IN GENERAL.—The rehabilitation pe-
12 riod for a plan in critical status is the 10-year
13 period beginning on the first day of the first
14 plan year of the multiemployer plan following
15 the earlier of—

16 “(i) the second anniversary of the
17 date of the adoption of the rehabilitation
18 plan, or

19 “(ii) the expiration of the collective
20 bargaining agreements in effect on the
21 date of the due date for the actuarial cer-
22 tification of critical status for the initial
23 critical year under subsection (a)(1) and
24 covering, as of such date at least 75 per-

1 cent of the active participants in such mul-
2 tiemployer plan.

3 If a plan emerges from critical status as pro-
4 vided under subparagraph (B) before the end of
5 such 10-year period, the rehabilitation period
6 shall end with the plan year preceding the plan
7 year for which the determination under sub-
8 paragraph (B) is made.

9 “(B) EMERGENCE.—A plan in critical sta-
10 tus shall remain in such status until a plan
11 year for which the plan actuary certifies, in ac-
12 cordance with subsection (b)(3)(A), that the
13 plan is not projected to have an accumulated
14 funding deficiency for the plan year or any of
15 the 9 succeeding plan years, without regard to
16 use of the shortfall method or any extension of
17 amortization periods under section 304(d).

18 “(5) PENALTY IF NO REHABILITATION PLAN
19 ADOPTED.—A failure of a plan sponsor to adopt a
20 rehabilitation plan by the date specified in para-
21 graph (1)(A) shall be treated for purposes of section
22 502(c)(2) as a failure or refusal by the plan admin-
23 istrator to file the annual report required to be filed
24 with the Secretary under section 101(b)(4).

1 “(6) REHABILITATION PLAN ADOPTION PE-
2 RIOD.—For purposes of this section, the term ‘reha-
3 bilitation plan adoption period’ means the period be-
4 ginning on the date of the certification under sub-
5 section (b)(3)(A) for the initial critical year and end-
6 ing on the day before the first day of the rehabilita-
7 tion period.

8 “(7) LIMITATION ON REDUCTION IN RATES OF
9 FUTURE ACCRUALS.—Any reduction in the rate of
10 future accruals under any schedule described in
11 paragraph (1)(B)(i) shall not reduce the rate of fu-
12 ture accruals below—

13 “(A) a monthly benefit (payable as a single
14 life annuity commencing at the participant’s
15 normal retirement age) equal to 1 percent of
16 the contributions required to be made with re-
17 spect to a participant, or the equivalent stand-
18 ard accrual rate for a participant or group of
19 participants under the collective bargaining
20 agreements in effect as of the first day of the
21 initial critical year, or

22 “(B) if lower, the accrual rate under the
23 plan on such first day.

24 The equivalent standard accrual rate shall be deter-
25 mined by the plan sponsor based on the standard or

1 average contribution base units which the plan spon-
2 sor determines to be representative for active partici-
3 pants and such other factors as the plan sponsor de-
4 termines to be relevant. Nothing in this paragraph
5 shall be construed as limiting the ability of the plan
6 sponsor to prepare and provide the bargaining par-
7 ties with alternative schedules to the default sched-
8 ule that established lower or higher accrual and con-
9 tribution rates than the rates otherwise described in
10 this paragraph.

11 “(8) EMPLOYER IMPACT.—For the purposes of
12 this section, the plan sponsor shall consider the im-
13 pact of the rehabilitation plan and contribution
14 schedules authorized by this section on bargaining
15 parties with fewer than 500 employees and shall im-
16 plement the plan in a manner that encourages their
17 continued participation in the plan and minimizes fi-
18 nancial harm to employers and their workers.

19 “(f) RULES FOR OPERATION OF PLAN DURING
20 ADOPTION AND REHABILITATION PERIOD.—

21 “(1) COMPLIANCE WITH REHABILITATION
22 PLAN.—

23 “(A) IN GENERAL.—A plan may not be
24 amended after the date of the adoption of a re-

1 habilitation plan under subsection (e) so as to
2 be inconsistent with the rehabilitation plan.

3 “(B) SPECIAL RULES FOR BENEFIT IN-
4 CREASES.—A plan may not be amended after
5 the date of the adoption of a rehabilitation plan
6 under subsection (e) so as to increase benefits,
7 including future benefit accruals, unless the
8 plan actuary certifies that such increase is paid
9 for out of additional contributions not con-
10 templated by the rehabilitation plan, and, after
11 taking into account the benefit increase, the
12 multiemployer plan still is reasonably expected
13 to emerge from critical status by the end of the
14 rehabilitation period on the schedule con-
15 templated in the rehabilitation plan.

16 “(2) RESTRICTION ON LUMP SUMS AND SIMI-
17 LAR BENEFITS.—

18 “(A) IN GENERAL.—Effective on the date
19 the notice of certification of the plan’s critical
20 status for the initial critical year under sub-
21 section (b)(3)(D) is sent, and notwithstanding
22 section 204(g), the plan shall not pay—

23 “(i) any payment, in excess of the
24 monthly amount paid under a single life
25 annuity (plus any social security supple-

1 ments described in the last sentence of sec-
2 tion 204(b)(1)(G)),

3 “(ii) any payment for the purchase of
4 an irrevocable commitment from an insurer
5 to pay benefits, and

6 “(iii) any other payment specified by
7 the Secretary of the Treasury by regula-
8 tions.

9 “(B) EXCEPTION.—Subparagraph (A)
10 shall not apply to a benefit which under section
11 203(e) may be immediately distributed without
12 the consent of the participant or to any makeup
13 payment in the case of a retroactive annuity
14 starting date or any similar payment of benefits
15 owed with respect to a prior period.

16 “(3) ADJUSTMENTS DISREGARDED IN WITH-
17 DRAWAL LIABILITY DETERMINATION.—Any benefit
18 reductions under this subsection shall be disregarded
19 in determining a plan’s unfunded vested benefits for
20 purposes of determining an employer’s withdrawal li-
21 ability under section 4201.

22 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-
23 RIOD.—During the rehabilitation plan adoption
24 period—

1 “(A) the plan sponsor may not accept a
2 collective bargaining agreement or participation
3 agreement with respect to the multiemployer
4 plan that provides for—

5 “(i) a reduction in the level of con-
6 tributions for any participants,

7 “(ii) a suspension of contributions
8 with respect to any period of service, or

9 “(iii) any new direct or indirect exclu-
10 sion of younger or newly hired employees
11 from plan participation, and

12 “(B) no amendment of the plan which in-
13 creases the liabilities of the plan by reason of
14 any increase in benefits, any change in the ac-
15 currence of benefits, or any change in the rate at
16 which benefits become nonforfeitable under the
17 plan may be adopted unless the amendment is
18 required as a condition of qualification under
19 part I of subchapter D of chapter 1 of the In-
20 ternal Revenue Code of 1986 or to comply with
21 other applicable law.

22 “(5) FAILURE TO MEET REQUIREMENTS.—

23 “(A) IN GENERAL.—Notwithstanding sec-
24 tion 4971(g) of the Internal Revenue Code of
25 1986, if a plan—

1 “(i) fails to meet the requirements of
2 subsection (e) by the end of the rehabilita-
3 tion period, or

4 “(ii) has received a certification under
5 subsection (b)(3)(A)(ii) for 3 consecutive
6 plan years that the plan is not making the
7 scheduled progress in meeting its require-
8 ments under the rehabilitation plan,

9 the plan shall be treated as having an accumu-
10 lated funding deficiency for purposes of section
11 4971 of such Code for the last plan year in
12 such period (and each succeeding plan year
13 until such requirements are met) in an amount
14 equal to the greater of the amount of the con-
15 tributions necessary to meet such requirements
16 or the amount of such accumulated funding de-
17 ficiency without regard to this paragraph.

18 “(B) WAIVER.—In the case of a failure de-
19 scribed in subparagraph (A) which is due to
20 reasonable cause and not to willful neglect, the
21 Secretary of the Treasury may waive part or all
22 of the tax imposed by section 4971 of such
23 Code to the extent that the payment of such tax
24 would be excessive or otherwise inequitable rel-
25 ative to the failure involved.

1 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
2 DECISIONS.—If, within 60 days of the due date for adop-
3 tion of a funding improvement plan under subsection (c)
4 or a rehabilitation plan under subsection (e), the plan
5 sponsor of a plan in endangered status or a plan in critical
6 status has not agreed on a funding improvement plan or
7 rehabilitation plan, then any member of the board or
8 group that constitutes the plan sponsor may require that
9 the plan sponsor enter into an expedited dispute resolution
10 procedure for the development and adoption of a funding
11 improvement plan or rehabilitation plan.

12 “(h) NONBARGAINED PARTICIPATION.—

13 “(1) BOTH BARGAINED AND NONBARGAINED
14 EMPLOYEE-PARTICIPANTS.—In the case of an em-
15 ployer that contributes to a multiemployer plan with
16 respect to both employees who are covered by one or
17 more collective bargaining agreements and to em-
18 ployees who are not so covered, if the plan is in en-
19 dangered status or in critical status, benefits of and
20 contributions for the nonbargained employees, in-
21 cluding surcharges on those contributions, shall be
22 determined as if those nonbargained employees were
23 covered under the first to expire of the employer’s
24 collective bargaining agreements in effect when the
25 plan entered endangered or critical status.

1 “(2) NONBARGAINED EMPLOYEES ONLY.—In
2 the case of an employer that contributes to a multi-
3 employer plan only with respect to employees who
4 are not covered by a collective bargaining agreement,
5 this section shall be applied as if the employer were
6 the bargaining parties, and its participation agree-
7 ment with the plan was a collective bargaining
8 agreement with a term ending on the first day of the
9 plan year beginning after the employer is provided
10 the schedule or schedules described in subsections
11 (c) and (e).

12 “(3) EMPLOYEES COVERED BY A COLLECTIVE
13 BARGAINING AGREEMENT.—The determination as to
14 whether an employee covered by a collective bar-
15 gaining agreement for purposes of this section shall
16 be made without regard to the special rule in Treas-
17 ury Regulation section 1.410(b)–6(d)(ii)(D).

18 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
19 poses of this section—

20 “(1) BARGAINING PARTY.—The term ‘bar-
21 gaining party’ means—

22 “(A)(i) except as provided in clause (ii), an
23 employer who has an obligation to contribute
24 under the plan; or

1 “(ii) in the case of a plan described under
2 section 404(c) of the Internal Revenue Code of
3 1986, or a continuation of such a plan, the as-
4 sociation of employers that is the employee set-
5 tlor of the plan; and

6 “(B) an employee organization which, for
7 purposes of collective bargaining, represents
8 plan participants employed by an employer who
9 has an obligation to contribute under the plan.

10 “(2) FUNDED PERCENTAGE.—The term ‘fund-
11 ed percentage’ means the percentage equal to a
12 fraction—

13 “(A) the numerator of which is the value
14 of the plan’s assets, as determined under sec-
15 tion 304(c)(2), and

16 “(B) the denominator of which is the ac-
17 crued liability of the plan, determined using ac-
18 tuarial assumptions described in section
19 304(c)(3).

20 “(3) ACCUMULATED FUNDING DEFICIENCY.—
21 The term ‘accumulated funding deficiency’ has the
22 meaning given such term in section 304(a).

23 “(4) ACTIVE PARTICIPANT.—The term ‘active
24 participant’ means, in connection with a multiem-

1 ployer plan, a participant who is in covered service
2 under the plan.

3 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
4 tive participant’ means, in connection with a multi-
5 employer plan, a participant, or the beneficiary or
6 alternate payee of a participant, who—

7 “(A) is not in covered service under the
8 plan, and

9 “(B) is in pay status under the plan or has
10 a nonforfeitable right to benefits under the
11 plan.

12 “(6) PAY STATUS.—A person is in pay status
13 under a multiemployer plan if—

14 “(A) at any time during the current plan
15 year, such person is a participant or beneficiary
16 under the plan and is paid an early, late, nor-
17 mal, or disability retirement benefit under the
18 plan (or a death benefit under the plan related
19 to a retirement benefit), or

20 “(B) to the extent provided in regulations
21 of the Secretary of the Treasury, such person
22 is entitled to such a benefit under the plan.

23 “(7) OBLIGATION TO CONTRIBUTE.—The term
24 ‘obligation to contribute’ has the meaning given such
25 term under section 4212(a).

1 “(8) ACTUARIAL METHOD.—Notwithstanding
2 any other provision of this section, the actuary’s de-
3 terminations with respect to a plan’s normal cost,
4 actuarial accrued liability, and improvements in a
5 plan’s funded percentage under this section shall be
6 based upon the unit credit funding method (whether
7 or not that method is used for the plan’s actuarial
8 valuation).

9 “(9) PLAN SPONSOR.—In the case of a plan de-
10 scribed under section 404(c) of the Internal Revenue
11 Code of 1986, or a continuation of such a plan, the
12 term ‘plan sponsor’ means the bargaining parties de-
13 scribed under paragraph (1).”.

14 (b) CAUSE OF ACTION TO COMPEL ADOPTION OF
15 FUNDING IMPROVEMENT OR REHABILITATION PLAN.—
16 Section 502(a) of the Employee Retirement Income Secu-
17 rity Act of 1974 is amended by striking “or” at the end
18 of paragraph (8), by striking the period at the end of para-
19 graph (9) and inserting “; or” and by adding at the end
20 the following:

21 “(10) in the case of a multiemployer plan that
22 has been certified by the actuary to be in endan-
23 gered or critical status under section 305, if the plan
24 sponsor has not adopted a funding improvement or
25 rehabilitation plan under subsection (c) or (e) of

1 that section by the deadline established in that sec-
2 tion, by an employer that has an obligation to con-
3 tribute with respect to the multiemployer plan or an
4 employee organization that represents active partici-
5 pants in the multiemployer plan, for an order com-
6 pelling the plan sponsor to adopt a funding improve-
7 ment or rehabilitation plan.”.

8 (c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971
9 of the Internal Revenue Code of 1986 is amended by re-
10 designating subsection (g) as subsection (h), and inserting
11 after subsection (f) the following:

12 “(g) MULTIEMPLOYER PLANS IN CRITICAL STA-
13 TUS.—No tax shall be imposed under this section for a
14 taxable year with respect to a multiemployer plan if, for
15 the plan years ending with or within the taxable year, the
16 plan is in critical status pursuant to section 305 of the
17 Employee Retirement Income Security Act of 1974. This
18 subsection shall only apply if the plan adopts a rehabilita-
19 tion plan in accordance with section 305(e) of such Act
20 and complies with such rehabilitation plan (and any modi-
21 fications of the plan) and shall not apply if an excise tax
22 is required to be imposed under this section by reason of
23 a violation of such section 305.”.

24 (d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

1 (1) Section 302(b) of the Employee Retirement
2 Income Security Act of 1974, as amended by this
3 Act , is amended by adding at the end the following
4 new paragraph:

5 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-
6 TUS.—Subparagraph (A) shall not apply in the case
7 of a multiemployer plan for any plan year in which
8 the plan is in critical status pursuant to section 305.
9 This paragraph shall only apply if the plan adopts
10 a rehabilitation plan in accordance with section
11 305(e) and complies with such rehabilitation plan
12 (and any modifications of the plan).”.

13 (2) Section 412(c) of the Internal Revenue
14 Code of 1986, as amended by this Act, is amended
15 by adding at the end the following new paragraph:

16 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-
17 TUS.—Subparagraph (A) shall not apply in the case
18 of a multiemployer plan for any plan year in which
19 the plan is in critical status pursuant to section 305
20 of the Employee Retirement Income Security Act of
21 1974. This paragraph shall only apply if the plan
22 adopts a rehabilitation plan in accordance with sec-
23 tion 305(e) of such Act and complies with such re-
24 habilitation plan (and any modifications of the
25 plan).”.

1 (e) CONFORMING AMENDMENT.—The table of con-
2 tents in section 1 of such Act (as amended by the pre-
3 ceding provisions of this Act) is amended by inserting
4 after the item relating to section 304 the following new
5 item:

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

6 (f) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendment made by
8 this section shall apply with respect to plan years be-
9 ginning after 2006.

10 (2) SPECIAL RULE FOR CERTAIN RESTORED
11 BENEFITS.—In the case of a multiemployer plan—

12 (A) with respect to which benefits were re-
13 duced pursuant to a plan amendment adopted
14 on or after January 1, 2002, and before June
15 30, 2005, and

16 (B) which, pursuant to the plan document,
17 the trust agreement, or a formal written com-
18 munication from the plan sponsor to partici-
19 pants provided before June 30, 2005, provided
20 for the restoration of such benefits,

21 the amendments made by this section shall not apply
22 to such benefit restorations to the extent that any
23 restriction on the providing or accrual of such bene-

1 fits would otherwise apply by reason of such amend-
2 ments.

3 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
4 **TIEMPLOYER PLANS.**

5 (a) **ADVANCE DETERMINATION OF IMPENDING IN-**
6 **SOLVENCY OVER 5 YEARS.**—Section 4245(d)(1) of the
7 Employee Retirement Income Security Act of 1974 (29
8 U.S.C. 1426(d)(1)) is amended—

9 (1) by striking “3 plan years” the second place
10 it appears and inserting “5 plan years”; and

11 (2) by adding at the end the following new sen-
12 tence: “If the plan sponsor makes such a determina-
13 tion that the plan will be insolvent in any of the next
14 5 plan years, the plan sponsor shall make the com-
15 parison under this paragraph at least annually until
16 the plan sponsor makes a determination that the
17 plan will not be insolvent in any of the next 5 plan
18 years.”.

19 (b) **EFFECTIVE DATE.**—The amendments made by
20 this section shall apply with respect to determinations
21 made in plan years beginning after 2006.

1 **SEC. 204. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED**
2 **UNDER AN AGREEMENT APPROVED BY THE**
3 **PENSION BENEFIT GUARANTY CORPORA-**
4 **TION.**

5 In the case of a multiemployer plan that is a party
6 to an agreement that was approved by the Pension Benefit
7 Guaranty Corporation prior to June 30, 2005, and that—

8 (1) increases benefits, and

9 (2) provides for special withdrawal liability
10 rules under section 4203(f) of the Employee Retirement
11 Income Security Act of 1974 (29 U.S.C.
12 1383),

13 the amendments made by sections 201, 202, 211, and 212
14 of this Act shall not apply to the benefit increases under
15 any plan amendment adopted prior to June 30, 2005, that
16 are funded pursuant to such agreement if the plan is fund-
17 ed in compliance with such agreement (and any amend-
18 ments thereto).

19 **SEC. 205. WITHDRAWAL LIABILITY REFORMS.**

20 (a) **REPEAL OF LIMITATION ON WITHDRAWAL LI-**
21 **ABILITY OF INSOLVENT EMPLOYERS.—**

22 (1) **IN GENERAL.—**Subsections (b) and (d) of
23 section 4225 of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. 1405) are repealed.

1 (2) CONFORMING AMENDMENTS.—Subsections
2 (c) and (e) of section 4225 of such Act are redesignig-
3 nated as subsections (b) and (c), respectively.

4 (3) EFFECTIVE DATE.—The amendments made
5 by this section shall apply with respect to sales oc-
6 curring on or after January 1, 2006.

7 (b) WITHDRAWAL LIABILITY CONTINUES IF WORK
8 CONTRACTED OUT.—

9 (1) IN GENERAL.—Clause (i) of section
10 4205(b)(2)(A) of such Act (29 U.S.C.
11 1385(b)(2)(A)) is amended by inserting “or to an
12 entity or entities owned or controlled by the em-
13 ployer” after “to another location”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by this subsection shall apply with respect to work
16 transferred on or after the date of the enactment of
17 this Act.

18 (c) APPLICATION OF FORGIVENESS RULE TO PLANS
19 PRIMARILY COVERING EMPLOYEES IN THE BUILDING
20 AND CONSTRUCTION.—

21 (1) IN GENERAL.—Section 4210(b) of such Act
22 (29 U.S.C. 1390(b)) is amended—

23 (A) by striking paragraph (1); and

1 (B) by redesignating paragraphs (2)
2 through (4) as paragraphs (1) through (3), re-
3 spectively.

4 (2) EFFECTIVE DATE.—The amendments made
5 by this subsection shall apply with respect to plan
6 withdrawals occurring on or after January 1, 2006.

7 **PART II—AMENDMENTS TO INTERNAL REVENUE**

8 **CODE OF 1986**

9 **SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
10 **BENEFIT PLANS.**

11 (a) IN GENERAL.—Subpart A of part III of sub-
12 chapter D of chapter 1 of the Internal Revenue Code of
13 1986 (as added by this Act) is amended by inserting after
14 section 430 the following new section:

15 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**
16 **PLOYER PLANS.**

17 “(a) IN GENERAL.—For purposes of section 412, the
18 accumulated funding deficiency of a multiemployer plan
19 for any plan year is—

20 “(1) except as provided in paragraph (2), the
21 amount, determined as of the end of the plan year,
22 equal to the excess (if any) of the total charges to
23 the funding standard account of the plan for all plan
24 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 of the Employee Retirement Income Security Act of
7 1974.

8 “(b) FUNDING STANDARD ACCOUNT.—

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

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

17 “(A) the normal cost of the plan for the
18 plan year,

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

22 “(i) separately, with respect to each
23 plan year, the net increase (if any) in un-
24 funded past service liability under the plan

1 arising from plan amendments adopted in
2 such year, over a period of 15 plan years,

3 “(ii) separately, with respect to each
4 plan year, the net experience loss (if any)
5 under the plan, over a period of 15 plan
6 years, and

7 “(iii) separately, with respect to each
8 plan year, the net loss (if any) resulting
9 from changes in actuarial assumptions
10 used under the plan, over a period of 15
11 plan years,

12 “(C) the amount necessary to amortize
13 each waived funding deficiency (within the
14 meaning of section 412(d)(3)) for each prior
15 plan year in equal annual installments (until
16 fully amortized) over a period of 15 plan years,

17 “(D) the amount necessary to amortize in
18 equal annual installments (until fully amor-
19 tized) over a period of 5 plan years any amount
20 credited to the funding standard account under
21 section 412(b)(3)(D) (as in effect on the day
22 before the date of the enactment of the Pension
23 Security and Transparency Act of 2005), and

24 “(E) the amount necessary to amortize in
25 equal annual installments (until fully amor-

1 tized) over a period of 20 years the contribu-
2 tions which would be required to be made under
3 the plan but for the provisions of section
4 412(c)(7)(A)(i)(I) (as in effect on the day be-
5 fore the date of the enactment of the Pension
6 Security and Transparency Act of 2005).

7 “(3) CREDITS TO ACCOUNT.—For a plan year,
8 the funding standard account shall be credited with
9 the sum of—

10 “(A) the amount considered contributed by
11 the employer to or under the plan for the plan
12 year,

13 “(B) the amount necessary to amortize in
14 equal annual installments (until fully amor-
15 tized)—

16 “(i) separately, with respect to each
17 plan year, the net decrease (if any) in un-
18 funded past service liability under the plan
19 arising from plan amendments adopted in
20 such year, over a period of 15 plan years,

21 “(ii) separately, with respect to each
22 plan year, the net experience gain (if any)
23 under the plan, over a period of 15 plan
24 years, and

1 “(iii) separately, with respect to each
2 plan year, the net gain (if any) resulting
3 from changes in actuarial assumptions
4 used under the plan, over a period of 15
5 plan years,

6 “(C) the amount of the waived funding de-
7 ficiency (within the meaning of section
8 412(d)(3)) for the plan year, and

9 “(D) in the case of a plan year for which
10 the accumulated funding deficiency is deter-
11 mined under the funding standard account if
12 such plan year follows a plan year for which
13 such deficiency was determined under the alter-
14 native minimum funding standard under section
15 412(g) (as in effect on the day before the date
16 of the enactment of the Pension Security and
17 Transparency Act of 2005), the excess (if any)
18 of any debit balance in the funding standard
19 account (determined without regard to this sub-
20 paragraph) over any debit balance in the alter-
21 native minimum funding standard account.

22 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
23 ORTIZED TO PLAN YEARS BEFORE 2007.—In the case
24 of any amount amortized under section 412(b) (as
25 in effect on the day before the date of the enactment

1 of the Pension Security and Transparency Act of
2 2005) over any period beginning with a plan year
3 beginning before 2007, in lieu of the amortization
4 described in paragraphs (2)(B) and (3)(B), such
5 amount shall continue to be amortized under such
6 section as so in effect.

7 “(5) COMBINING AND OFFSETTING AMOUNTS
8 TO BE AMORTIZED.—Under regulations prescribed
9 by the Secretary, amounts required to be amortized
10 under paragraph (2) or paragraph (3), as the case
11 may be—

12 “(A) may be combined into one amount
13 under such paragraph to be amortized over a
14 period determined on the basis of the remaining
15 amortization period for all items entering into
16 such combined amount, and

17 “(B) may be offset against amounts re-
18 quired to be amortized under the other such
19 paragraph, with the resulting amount to be am-
20 ortized over a period determined on the basis of
21 the remaining amortization periods for all items
22 entering into whichever of the two amounts
23 being offset is the greater.

24 “(6) INTEREST.—The funding standard ac-
25 count (and items therein) shall be charged or cred-

1 ited (as determined under regulations prescribed by
2 the Secretary of the Treasury) with interest at the
3 appropriate rate consistent with the rate or rates of
4 interest used under the plan to determine costs.

5 “(7) SPECIAL RULES RELATING TO CHARGES
6 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
7 For purposes of this part—

8 “(A) WITHDRAWAL LIABILITY.—Any
9 amount received by a multiemployer plan in
10 payment of all or part of an employer’s with-
11 drawal liability under part 1 of subtitle E of
12 title IV of the Employee Retirement Income Se-
13 curity Act of 1974 shall be considered an
14 amount contributed by the employer to or
15 under the plan. The Secretary may prescribe by
16 regulation additional charges and credits to a
17 multiemployer plan’s funding standard account
18 to the extent necessary to prevent withdrawal li-
19 ability payments from being unduly reflected as
20 advance funding for plan liabilities.

21 “(B) ADJUSTMENTS WHEN A MULTIEM-
22 PLOYER PLAN LEAVES REORGANIZATION.—If a
23 multiemployer plan is not in reorganization in
24 the plan year but was in reorganization in the
25 immediately preceding plan year, any balance in

1 the funding standard account at the close of
2 such immediately preceding plan year—

3 “(i) shall be eliminated by an offset-
4 ting credit or charge (as the case may be),
5 but

6 “(ii) shall be taken into account in
7 subsequent plan years by being amortized
8 in equal annual installments (until fully
9 amortized) over 30 plan years.

10 The preceding sentence shall not apply to the
11 extent of any accumulated funding deficiency
12 under section 4243(a) of such Act as of the end
13 of the last plan year that the plan was in reor-
14 ganization.

15 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
16 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
17 FUND.—Any amount paid by a plan during a
18 plan year to the Pension Benefit Guaranty Cor-
19 poration pursuant to section 4222 of such Act
20 or to a fund exempt under section 501(c)(22)
21 pursuant to section 4223 of such Act shall re-
22 duce the amount of contributions considered re-
23 ceived by the plan for the plan year.

24 “(D) INTERIM WITHDRAWAL LIABILITY
25 PAYMENTS.—Any amount paid by an employer

1 pending a final determination of the employer's
2 withdrawal liability under part 1 of subtitle E
3 of title IV of such Act and subsequently re-
4 funded to the employer by the plan shall be
5 charged to the funding standard account in ac-
6 cordance with regulations prescribed by the
7 Secretary.

8 “(E) ELECTION FOR DEFERRAL OF
9 CHARGE FOR PORTION OF NET EXPERIENCE
10 LOSS.—If an election is in effect under section
11 412(b)(7)(F) (as in effect on the day before the
12 date of the enactment of the Pension Security
13 and Transparency Act of 2005) for any plan
14 year, the funding standard account shall be
15 charged in the plan year to which the portion
16 of the net experience loss deferred by such elec-
17 tion was deferred with the amount so deferred
18 (and paragraph (2)(B)(ii) shall not apply to the
19 amount so charged).

20 “(F) FINANCIAL ASSISTANCE.—Any
21 amount of any financial assistance from the
22 Pension Benefit Guaranty Corporation to any
23 plan, and any repayment of such amount, shall
24 be taken into account under this section and

1 section 412 in such manner as is determined by
2 the Secretary.

3 “(G) SHORT-TERM BENEFITS.—To the ex-
4 tent that any plan amendment increases the un-
5 funded past service liability under the plan by
6 reason of an increase in benefits which are pay-
7 able under the terms of the plan for a period
8 that does not exceed 14 years from the effective
9 date of the amendment, paragraph (2)(B)(i)
10 shall be applied separately with respect to such
11 increase in unfunded past service liability by
12 substituting the number of years of the period
13 during which such benefits are payable for ‘15’.

14 “(c) ADDITIONAL RULES.—

15 “(1) DETERMINATIONS TO BE MADE UNDER
16 FUNDING METHOD.—For purposes of this part, nor-
17 mal costs, accrued liability, past service liabilities,
18 and experience gains and losses shall be determined
19 under the funding method used to determine costs
20 under the plan.

21 “(2) VALUATION OF ASSETS.—

22 “(A) IN GENERAL.—For purposes of this
23 part, the value of the plan’s assets shall be de-
24 termined on the basis of any reasonable actu-
25 arial method of valuation which takes into ac-

1 count fair market value and which is permitted
2 under regulations prescribed by the Secretary.

3 “(B) ELECTION WITH RESPECT TO
4 BONDS.—The value of a bond or other evidence
5 of indebtedness which is not in default as to
6 principal or interest may, at the election of the
7 plan administrator, be determined on an amor-
8 tized basis running from initial cost at purchase
9 to par value at maturity or earliest call date.
10 Any election under this subparagraph shall be
11 made at such time and in such manner as the
12 Secretary shall by regulations provide, shall
13 apply to all such evidences of indebtedness, and
14 may be revoked only with the consent of the
15 Secretary.

16 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
17 SONABLE.—For purposes of this section, all costs, li-
18 abilities, rates of interest, and other factors under
19 the plan shall be determined on the basis of actu-
20 arial assumptions and methods—

21 “(A) each of which is reasonable (taking
22 into account the experience of the plan and rea-
23 sonable expectations), and

1 “(B) which, in combination, offer the actu-
2 ary’s best estimate of anticipated experience
3 under the plan.

4 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
5 PERIENCE GAIN OR LOSS.—For purposes of this sec-
6 tion, if—

7 “(A) a change in benefits under the Social
8 Security Act or in other retirement benefits cre-
9 ated under Federal or State law, or

10 “(B) a change in the definition of the term
11 ‘wages’ under section 3121, or a change in the
12 amount of such wages taken into account under
13 regulations prescribed for purposes of section
14 401(a)(5),

15 results in an increase or decrease in accrued liability
16 under a plan, such increase or decrease shall be
17 treated as an experience loss or gain.

18 “(5) FULL FUNDING.—If, as of the close of a
19 plan year, a plan would (without regard to this para-
20 graph) have an accumulated funding deficiency in
21 excess of the full funding limitation—

22 “(A) the funding standard account shall be
23 credited with the amount of such excess, and

24 “(B) all amounts described in subpara-
25 graphs (B), (C), and (D) of subsection (b) (2)

1 and subparagraph (B) of subsection (b)(3)
2 which are required to be amortized shall be con-
3 sidered fully amortized for purposes of such
4 subparagraphs.

5 “(6) FULL-FUNDING LIMITATION.—

6 “(A) IN GENERAL.—For purposes of para-
7 graph (5), the term ‘full-funding limitation’
8 means the excess (if any) of—

9 “(i) the accrued liability (including
10 normal cost) under the plan (determined
11 under the entry age normal funding meth-
12 od if such accrued liability cannot be di-
13 rectly calculated under the funding method
14 used for the plan), over

15 “(ii) the lesser of—

16 “(I) the fair market value of the
17 plan’s assets, or

18 “(II) the value of such assets de-
19 termined under paragraph (2).

20 “(B) MINIMUM AMOUNT.—

21 “(i) IN GENERAL.—In no event shall
22 the full-funding limitation determined
23 under subparagraph (A) be less than the
24 excess (if any) of—

1 poses of clause (i), any benefit contingent
2 on an event other than—

3 “(I) age, service, compensation,
4 death, or disability, or

5 “(II) an event which is reason-
6 ably and reliably predictable (as deter-
7 mined by the Secretary),

8 shall not be taken into account until the
9 event on which the benefit is contingent oc-
10 curs.

11 “(iii) INTEREST RATE USED.—The
12 rate of interest used to determine current
13 liability under this paragraph shall be the
14 rate of interest determined under subpara-
15 graph (E).

16 “(iv) MORTALITY TABLES.—

17 “(I) COMMISSIONERS’ STANDARD
18 TABLE.—In the case of plan years be-
19 ginning before the first plan year to
20 which the first tables prescribed under
21 subclause (II) apply, the mortality
22 table used in determining current li-
23 ability under this paragraph shall be
24 the table prescribed by the Secretary
25 which is based on the prevailing com-

1 missioners' standard table (described
2 in section 807(d)(5)(A)) used to de-
3 termine reserves for group annuity
4 contracts issued on January 1, 1993.

5 “(II) SECRETARIAL AUTHOR-
6 ITY.—The Secretary may by regula-
7 tion prescribe for plan years beginning
8 after December 31, 1999, mortality
9 tables to be used in determining cur-
10 rent liability under this subsection.
11 Such tables shall be based upon the
12 actual experience of pension plans and
13 projected trends in such experience.
14 In prescribing such tables, the Sec-
15 retary shall take into account results
16 of available independent studies of
17 mortality of individuals covered by
18 pension plans.

19 “(v) SEPARATE MORTALITY TABLES
20 FOR THE DISABLED.—Notwithstanding
21 clause (iv)—

22 “(I) IN GENERAL.—The Sec-
23 retary shall establish mortality tables
24 which may be used (in lieu of the ta-
25 bles under clause (iv)) to determine

1 current liability under this subsection
2 for individuals who are entitled to
3 benefits under the plan on account of
4 disability. The Secretary shall estab-
5 lish separate tables for individuals
6 whose disabilities occur in plan years
7 beginning before January 1, 1995,
8 and for individuals whose disabilities
9 occur in plan years beginning on or
10 after such date.

11 “(II) SPECIAL RULE FOR DIS-
12 ABILITIES OCCURRING AFTER 1994.—
13 In the case of disabilities occurring in
14 plan years beginning after December
15 31, 1994, the tables under subclause
16 (I) shall apply only with respect to in-
17 dividuals described in such subclause
18 who are disabled within the meaning
19 of title II of the Social Security Act
20 and the regulations thereunder.

21 “(vi) PERIODIC REVIEW.—The Sec-
22 retary shall periodically (at least every 5
23 years) review any tables in effect under
24 this subparagraph and shall, to the extent
25 such Secretary determines necessary, by

1 regulation update the tables to reflect the
2 actual experience of pension plans and pro-
3 jected trends in such experience.

4 “(E) REQUIRED CHANGE OF INTEREST
5 RATE.—For purposes of determining a plan’s
6 current liability for purposes of this
7 paragraph—

8 “(i) IN GENERAL.—If any rate of in-
9 terest used under the plan under sub-
10 section (b)(6) to determine cost is not
11 within the permissible range, the plan shall
12 establish a new rate of interest within the
13 permissible range.

14 “(ii) PERMISSIBLE RANGE.—For pur-
15 poses of this subparagraph—

16 “(I) IN GENERAL.—Except as
17 provided in subclause (II), the term
18 ‘permissible range’ means a rate of in-
19 terest which is not more than 5 per-
20 cent above, and not more than 10 per-
21 cent below, the weighted average of
22 the rates of interest on 30-year Treas-
23 ury securities during the 4-year period
24 ending on the last day before the be-
25 ginning of the plan year.

1 “(II) SECRETARIAL AUTHOR-
2 ITY.—If the Secretary finds that the
3 lowest rate of interest permissible
4 under subclause (I) is unreasonably
5 high, the Secretary may prescribe a
6 lower rate of interest, except that
7 such rate may not be less than 80
8 percent of the average rate deter-
9 mined under such subclause.

10 “(iii) ASSUMPTIONS.—Notwith-
11 standing paragraph (3)(A), the interest
12 rate used under the plan shall be—

13 “(I) determined without taking
14 into account the experience of the
15 plan and reasonable expectations, but

16 “(II) consistent with the assump-
17 tions which reflect the purchase rates
18 which would be used by insurance
19 companies to satisfy the liabilities
20 under the plan.

21 “(7) ANNUAL VALUATION.—

22 “(A) IN GENERAL.—For purposes of this
23 section, a determination of experience gains and
24 losses and a valuation of the plan’s liability
25 shall be made not less frequently than once

1 every year, except that such determination shall
2 be made more frequently to the extent required
3 in particular cases under regulations prescribed
4 by the Secretary.

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.

20 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
21 MULTIEMPLOYER PLANS.—

22 “(1) AUTOMATIC EXTENSION UPON APPLICA-
23 TION BY CERTAIN PLANS.—

24 “(A) IN GENERAL.—If the plan sponsor of
25 a multiemployer plan—

1 “(i) submits to the Secretary an appli-
2 cation for an extension of the period of
3 years required to amortize any unfunded
4 liability described in any clause of sub-
5 section (b)(2)(B) or described in subsection
6 (b)(4), and

7 “(ii) includes with the application a
8 certification by the plan’s actuary de-
9 scribed in subparagraph (B),

10 the Secretary shall extend the amortization pe-
11 riod for the period of time (not in excess of 5
12 years) specified in the application. Such exten-
13 sion shall be in addition to any extension under
14 paragraph (2).

15 “(B) CRITERIA.—A certification with re-
16 spect to a multiemployer plan is described in
17 this subparagraph if the plan’s actuary certifies
18 that, based on reasonable assumptions—

19 “(i) absent the extension under sub-
20 paragraph (A), the plan would have an ac-
21 cumulated funding deficiency in the cur-
22 rent plan year or any of the 9 succeeding
23 plan years,

24 “(ii) the plan sponsor has adopted a
25 plan to improve the plan’s funding status,

1 “(iii) the plan is projected to have suf-
2 ficient assets to timely pay expected bene-
3 fits and anticipated expenditures over the
4 amortization period as extended, and

5 “(iv) the notice required under para-
6 graph (3)(A) has been provided.

7 “(2) ADDITIONAL EXTENSION.—

8 “(A) IN GENERAL.—If the plan sponsor of
9 a multiemployer plan submits to the Secretary
10 an application for an extension of the period of
11 years required to amortize any unfunded liabil-
12 ity described in any clause of subsection
13 (b)(2)(B) or described in subsection (b)(4), the
14 Secretary may extend the amortization period
15 for a period of time (not in excess of 5 years)
16 if the Secretary of the Treasury makes the de-
17 termination described in subparagraph (B).
18 Such extension shall be in addition to any ex-
19 tension under paragraph (1).

20 “(B) DETERMINATION.—The Secretary
21 may grant an extension under subparagraph
22 (A) if the Secretary determines that—

23 “(i) such extension would carry out
24 the purposes of this Act and would provide

1 adequate protection for participants under
2 the plan and their beneficiaries, and

3 “(ii) the failure to permit such exten-
4 sion would—

5 “(I) result in a substantial risk
6 to the voluntary continuation of the
7 plan, or a substantial curtailment of
8 pension benefit levels or employee
9 compensation, and

10 “(II) be adverse to the interests
11 of plan participants in the aggregate.

12 “(C) ACTION BY SECRETARY.—The Sec-
13 retary shall act upon any application for an ex-
14 tension under this paragraph within 180 days
15 of the submission of such application. If the
16 Secretary rejects the application for an exten-
17 sion under this paragraph, the Secretary shall
18 provide notice to the plan detailing the specific
19 reasons for the rejection, including references to
20 the criteria set forth above.

21 “(3) ADVANCE NOTICE.—

22 “(A) IN GENERAL.—The Secretary shall,
23 before granting an extension under this sub-
24 section, require each applicant to provide evi-
25 dence satisfactory to such Secretary that the

1 applicant has provided notice of the filing of the
2 application for such extension to each affected
3 party (as defined in section 4001(a)(21) of the
4 Employee Retirement Income Security Act of
5 1974) with respect to the affected plan. Such
6 notice shall include a description of the extent
7 to which the plan is funded for benefits which
8 are guaranteed under title IV of such Act and
9 for benefit liabilities.

10 “(B) CONSIDERATION OF RELEVANT IN-
11 FORMATION.—The Secretary shall consider any
12 relevant information provided by a person to
13 whom notice was given under paragraph (1).”.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply to plan years beginning after
17 2006.

18 (2) SPECIAL RULE FOR CERTAIN AMORTIZATION
19 EXTENSIONS.—If the Secretary of the Treasury
20 grants an extension under section 304 of the Em-
21 ployee Retirement Income Security Act of 1974 and
22 section 412(e) of the Internal Revenue Code of 1986
23 with respect to any application filed with the Sec-
24 retary of the Treasury on or before June 30, 2005,
25 the extension (and any modification thereof) shall be

1 applied and administered under the rules of such
2 sections as in effect before the enactment of this
3 Act, including the use of the rate of interest deter-
4 mined under section 6621(b) of such Code.

5 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**
6 **PLOYER PLANS IN ENDANGERED OR CRIT-**
7 **ICAL STATUS.**

8 (a) IN GENERAL.—Subpart A of part III of sub-
9 chapter D of chapter 1 of the Internal Revenue Code of
10 1986 (as amended by this Act) is amended by inserting
11 after section 431 the following new section:

12 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**
13 **PLOYER PLANS IN ENDANGERED STATUS OR**
14 **CRITICAL STATUS.**

15 “(a) GENERAL RULE.—For purposes of this part, in
16 the case of a multiemployer plan—

17 “(1) if the plan is in endangered status—

18 “(A) the plan sponsor shall adopt and im-
19 plement a funding improvement plan in accord-
20 ance with the requirements of subsection (c),
21 and

22 “(B) the requirements of subsection (d)
23 shall apply during the funding plan adoption
24 period and the funding improvement period,
25 and

1 “(2) if the plan is in critical status—

2 “(A) the plan sponsor shall adopt and im-
3 plement a rehabilitation plan in accordance with
4 the requirements of subsection (e), and

5 “(B) the requirements of subsection (f)
6 shall apply during the rehabilitation plan adop-
7 tion period and the rehabilitation period.

8 “(b) DETERMINATION OF ENDANGERED AND CRIT-
9 ICAL STATUS.—For purposes of this section—

10 “(1) ENDANGERED STATUS.—A multiemployer
11 plan is in endangered status for a plan year if, as
12 determined by the plan actuary under paragraph
13 (3), the plan is not in critical status for the plan
14 year and either—

15 “(A) the plan’s funded percentage for such
16 plan year is less than 80 percent, or

17 “(B) the plan has an accumulated funding
18 deficiency for such plan year, or is projected to
19 have such an accumulated funding deficiency
20 for any of the 6 succeeding plan years, taking
21 into account any extension of amortization peri-
22 ods under section 431(d).

23 For purposes of this section, a plan described in
24 subparagraph (B) shall be treated as in seriously en-
25 dangered status.

1 “(2) CRITICAL STATUS.—A multiemployer plan
2 is in critical status for a plan year if, as determined
3 by the plan actuary under paragraph (3), the plan
4 is described in 1 or more of the following subpara-
5 graphs as of the beginning of the plan year:

6 “(A) A plan is described in this subpara-
7 graph if—

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

10 “(ii) the sum of—

11 “(I) the market value of plan as-
12 sets, plus

13 “(II) the present value of the
14 reasonably anticipated employer con-
15 tributions for the current plan year
16 and each of the 5 succeeding plan
17 years, assuming that the terms of all
18 collective bargaining agreements pur-
19 suant to which the plan is maintained
20 for the current plan year continue in
21 effect for succeeding plan years,

22 is less than the present value of all benefits
23 projected to be payable under the plan dur-
24 ing the current plan year and each of the

1 5 succeeding plan years (plus administra-
2 tive expenses for such plan years).

3 “(B) A plan is described in this subpara-
4 graph if—

5 “ (i) the plan has an accumulated
6 funding deficiency for the current plan
7 year, not taking into account any extension
8 of amortization periods under section
9 431(d), or

10 “(ii) the plan is projected to have an
11 accumulated funding deficiency for any of
12 the 3 succeeding plan years (4 succeeding
13 plan years if the funded percentage of the
14 plan is 65 percent or less), not taking into
15 account any extension of amortization peri-
16 ods under section 431(d).

17 “(C) A plan is described in this subpara-
18 graph if—

19 “(i)(I) the plan’s normal cost for the
20 current plan year, plus interest (deter-
21 mined at the rate used for determining
22 costs under the plan) for the current plan
23 year on the amount of unfunded benefit li-
24 abilities under the plan as of the last date
25 of the preceding plan year, exceeds

1 “(II) the present value of the reason-
2 ably anticipated employer contributions for
3 the current plan year,

4 “(ii) the present value of nonforfeit-
5 able benefits of inactive participants is
6 greater than the present value of non-
7 forfeitable benefits of active participants,
8 and

9 “(iii) the plan has an accumulated
10 funding deficiency for the current plan
11 year, or is projected to have such a defi-
12 ciency for any of the 4 succeeding plan
13 years, not taking into account any exten-
14 sion of amortization periods under section
15 431(d).

16 “(D) A plan is described in this subpara-
17 graph if the sum of—

18 “(i) the market value of plan assets,
19 plus

20 “(ii) the present value of the reason-
21 ably anticipated employer contributions for
22 the current plan year and each of the 4
23 succeeding plan years, assuming that the
24 terms of all collective bargaining agree-
25 ments pursuant to which the plan is main-

1 tained for the current plan year continue
2 in effect for succeeding plan years,
3 is less than the present value of all benefits pro-
4 jected to be payable under the plan during the
5 current plan year and each of the 4 succeeding
6 plan years (plus administrative expenses for
7 such plan years).

8 “(3) ANNUAL CERTIFICATION BY PLAN ACTU-
9 ARY.—

10 “(A) IN GENERAL.—During the 90-day pe-
11 riod beginning on the first day of each plan
12 year of a multiemployer plan, the plan actuary
13 shall certify to the Secretary—

14 “(i) whether or not the plan is in en-
15 dangered status for such plan year and
16 whether or not the plan is in critical status
17 for such plan year, and

18 “(ii) in the case of a plan which is in
19 a funding improvement or rehabilitation
20 period, whether or not the plan is making
21 the scheduled progress in meeting the re-
22 quirements of its funding improvement or
23 rehabilitation plan.

24 “(B) ACTUARIAL PROJECTIONS OF ASSETS
25 AND LIABILITIES.—

1 “(i) IN GENERAL.—In making the de-
2 terminations and projections under this
3 subsection, the plan actuary shall make
4 projections required for the current and
5 succeeding plan years, using reasonable ac-
6 tuarial estimates, assumptions, and meth-
7 ods, of the current value of the assets of
8 the plan and the present value of all liabil-
9 ities to participants and beneficiaries under
10 the plan for the current plan year as of the
11 beginning of such year. The projected
12 present value of liabilities as of the begin-
13 ning of such year shall be determined
14 based on the actuarial statement required
15 under section 103(d) of the Employee Re-
16 tirement Income Security Act of 1974 with
17 respect to the most recently filed annual
18 report or the actuarial valuation for the
19 preceding plan year.

20 “(ii) DETERMINATIONS OF FUTURE
21 CONTRIBUTIONS.—Any actuarial projection
22 of plan assets shall assume—

23 “(I) reasonably anticipated em-
24 ployer contributions for the current
25 and succeeding plan years, assuming

1 that the terms of the one or more col-
2 lective bargaining agreements pursu-
3 ant to which the plan is maintained
4 for the current plan year continue in
5 effect for succeeding plan years, or

6 “(II) that employer contributions
7 for the most recent plan year will con-
8 tinue indefinitely, but only if the plan
9 actuary determines there have been no
10 significant demographic changes that
11 would make such assumption unrea-
12 sonable.

13 “(C) PENALTY FOR FAILURE TO SECURE
14 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
15 ure of the plan’s actuary to certify the plan’s
16 status under this subsection by the date speci-
17 fied in subparagraph (A) shall be treated for
18 purposes of section 502(c)(2) of such Act as a
19 failure or refusal by the plan administrator to
20 file the annual report required to be filed with
21 the Secretary under section 101(b)(4) of such
22 Act.

23 “(D) NOTICE.—In any case in which a
24 multiemployer plan is certified to be in endan-
25 gered or critical status under subparagraph (A),

1 the plan sponsor shall, not later than 30 days
2 after the date of the certification, provide notifi-
3 cation of the endangered or critical status to
4 the participants and beneficiaries, the bar-
5 gaining parties, the Pension Benefit Guaranty
6 Corporation, the Secretary, and the Secretary
7 of Labor.

8 “(c) FUNDING IMPROVEMENT PLAN MUST BE
9 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
10 STATUS.—

11 “(1) IN GENERAL.—In any case in which a
12 multiemployer plan is in endangered status for a
13 plan year, the plan sponsor, in accordance with this
14 subsection—

15 “(A) shall adopt a funding improvement
16 plan not later than 240 days following the re-
17 quired date for the actuarial certification of en-
18 dangered status under subsection (b)(3)(A),
19 and

20 “(B) within 30 days after the adoption of
21 the funding improvement plan—

22 “(i) in the case of a plan in seriously
23 endangered status, shall provide to the
24 bargaining parties 1 or more schedules
25 showing revised benefit structures, revised

1 contribution structures, or both, which, if
2 adopted, may reasonably be expected to en-
3 able the multiemployer plan to meet the
4 applicable requirements under paragraph
5 (3) in accordance with the funding im-
6 provement plan, including a description of
7 the reductions in future benefit accruals
8 and increases in contributions that the
9 plan sponsor determines are reasonably
10 necessary to meet the applicable require-
11 ments if the plan sponsor assumes that
12 there are no increases in contributions
13 under the plan other than the increases
14 necessary to meet the applicable require-
15 ments after future benefit accruals have
16 been reduced to the maximum extent per-
17 mitted by law, and

18 “(ii) may, if the plan sponsor deems
19 appropriate, prepare and provide the bar-
20 gaining parties with additional information
21 relating to contribution rates or benefit re-
22 ductions, alternative schedules, or other in-
23 formation relevant to achieving the re-
24 quirements under paragraph (3) in accord-
25 ance with the funding improvement plan.

1 “(2) EXCEPTION FOR YEARS AFTER PROCESS
2 BEGINS.—Paragraph (1) shall not apply to a plan
3 year if such year is in a funding plan adoption pe-
4 riod or funding improvement period by reason of the
5 plan being in endangered status for a preceding plan
6 year. For purposes of this section, such preceding
7 plan year shall be the initial determination year with
8 respect to the funding improvement plan to which it
9 relates.

10 “(3) FUNDING IMPROVEMENT PLAN.—For pur-
11 poses of this section—

12 “(A) IN GENERAL.—A funding improve-
13 ment plan is a plan which consists of the ac-
14 tions, including options or a range of options to
15 be proposed to the bargaining parties, which,
16 under reasonable actuarial assumptions, will re-
17 sult in the plan meeting the requirements of
18 this paragraph.

19 “(B) PLANS OTHER THAN SERIOUSLY EN-
20 DANGERED PLANS.—In the case of plan not in
21 seriously endangered status, the requirements
22 of this paragraph are met if the plan’s funded
23 percentage as of the close of the funding im-
24 provement period exceeds the lesser of 80 per-
25 cent or a percentage equal to the sum of—

1 “(i) such percentage as of the begin-
2 ning of such period, plus

3 “(ii) 10 percent of the percentage de-
4 termined under clause (i).

5 “(C) SERIOUSLY ENDANGERED PLANS.—

6 In the case of a plan in seriously endangered
7 status, the requirements of this paragraph are
8 met if—

9 “(i) the plan’s funded percentage as
10 of the close of the funding improvement
11 period equals or exceeds the percentage
12 which is equal to the sum of—

13 “(I) such percentage as of the
14 beginning of such period, plus

15 “(II) 33 percent of the difference
16 between 100 percent and the percent-
17 age under subclause (I), and

18 “(ii) there is no accumulated funding
19 deficiency for any plan year during the
20 funding improvement period (taking into
21 account any extension of amortization peri-
22 ods under section 431(d)).

23 “(4) FUNDING IMPROVEMENT PERIOD.—For
24 purposes of this section—

1 “(A) IN GENERAL.—The funding improve-
2 ment period for any funding improvement plan
3 adopted pursuant to this subsection is the 10-
4 year period beginning on the first day of the
5 first plan year of the multiemployer plan begin-
6 ning after the earlier of—

7 “(i) the second anniversary of the
8 date of the adoption of the funding im-
9 provement plan, or

10 “(ii) the expiration of the collective
11 bargaining agreements in effect on the due
12 date for the actuarial certification of en-
13 dangered status for the initial determina-
14 tion year under subsection (b)(3)(A) and
15 covering, as of such due date, at least 75
16 percent of the active participants in such
17 multiemployer plan.

18 “(B) COORDINATION WITH CHANGES IN
19 STATUS.—

20 “(i) PLANS NO LONGER IN ENDAN-
21 GERED STATUS.—If the plan’s actuary cer-
22 tifies under subsection (b)(3)(A) for a plan
23 year in any funding plan adoption period
24 or funding improvement period that the
25 plan is no longer in endangered status and

1 is not in critical status, the funding plan
2 adoption period or funding improvement
3 period, whichever is applicable, shall end as
4 of the close of the preceding plan year.

5 “(ii) PLANS IN CRITICAL STATUS.—If
6 the plan’s actuary certifies under sub-
7 section (b)(3)(A) for a plan year in any
8 funding plan adoption period or funding
9 improvement period that the plan is in
10 critical status, the funding plan adoption
11 period or funding improvement period,
12 whichever is applicable, shall end as of the
13 close of the plan year preceding the first
14 plan year in the rehabilitation period with
15 respect to such status.

16 “(5) SPECIAL RULES FOR CERTAIN UNDER-
17 FUNDED PLANS.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), if the funded percentage of
20 a plan in seriously endangered status was 70
21 percent or less as of the beginning of the initial
22 determination year, the following rules shall
23 apply in determining whether the requirements
24 of paragraph (3)(C)(i) are met:

1 “(i) The plan’s funded percentage as
2 of the close of the funding improvement
3 period must equal or exceed a percentage
4 which is equal to the sum of—

5 “(I) such percentage as of the
6 beginning of such period, plus

7 “(II) 20 percent of the difference
8 between 100 percent and the percent-
9 age under subclause (I).

10 “(ii) The funding improvement period
11 under paragraph (4)(A) shall be 15 years
12 rather than 10 years.

13 “(B) SPECIAL RULES FOR PLANS WITH
14 FUNDED PERCENTAGE OVER 70 PERCENT.—If
15 the funded percentage described in subpara-
16 graph (A) was more than 70 percent but less
17 than 80 percent as of the beginning of the ini-
18 tial determination year—

19 “(i) subparagraph (A) shall apply if
20 the plan’s actuary certifies, within 30 days
21 after the certification under subsection
22 (b)(3)(A) for the initial determination
23 year, that, based on the terms of the plan
24 and the collective bargaining agreements in
25 effect at the time of such certification, the

1 plan is not projected to meet the require-
2 ments of paragraph (3)(C)(i) without re-
3 gard to this paragraph, and

4 “(ii) if there is a certification under
5 clause (i), the plan may, in formulating its
6 funding improvement plan, only take into
7 account the rules of subparagraph (A) for
8 plan years in the funding improvement pe-
9 riod beginning on or before the date on
10 which the last of the collective bargaining
11 agreements described in paragraph
12 (4)(A)(ii) expires.

13 Notwithstanding clause (ii), if for any plan year
14 ending after the date described in clause (ii) the
15 plan actuary certifies (at the time of the annual
16 certification under subsection (b)(3)(A) for such
17 plan year) that, based on the terms of the plan
18 and collective bargaining agreements in effect
19 at the time of that annual certification, the plan
20 is not projected to be able to meet the require-
21 ments of paragraph (3)(C)(i) without regard to
22 this paragraph, the plan may continue to as-
23 sume for such year that the funding improve-
24 ment period is 15 years rather than 10 years.

1 “(6) UPDATES TO FUNDING IMPROVEMENT
2 PLAN AND SCHEDULES.—

3 “(A) FUNDING IMPROVEMENT PLAN.—The
4 plan sponsor shall annually update the funding
5 improvement plan and shall file the update with
6 the plan’s annual report under section 104 of
7 the Employee Retirement Income Security Act
8 of 1974.

9 “(B) SCHEDULES.—The plan sponsor may
10 periodically update any schedule of contribution
11 rates provided under this subsection to reflect
12 the experience of the plan, except that the
13 schedule or schedules described in paragraph
14 (1)(B)(i) shall be updated at least once every 3
15 years.

16 “(C) DURATION OF SCHEDULE.—A sched-
17 ule of contribution rates provided by the plan
18 sponsor and relied upon by bargaining parties
19 in negotiating a collective bargaining agreement
20 shall remain in effect for the duration of that
21 collective bargaining agreement.

22 “(7) PENALTY IF NO FUNDING IMPROVEMENT
23 PLAN ADOPTED.—A failure of the plan sponsor to
24 adopt a funding improvement plan by the date speci-
25 fied in paragraph (1)(A) shall be treated for pur-

1 poses of section 502(c)(2) of such Act as a failure
2 or refusal by the plan administrator to file the an-
3 nual report required to be filed with the Secretary
4 of Labor under section 101(b)(4) of such Act.

5 “(8) FUNDING PLAN ADOPTION PERIOD.—For
6 purposes of this section, the term ‘funding plan
7 adoption period’ means the period beginning on the
8 date of the certification under subsection (b)(3)(A)
9 for the initial determination year and ending on the
10 day before the first day of the funding improvement
11 period.

12 “(d) RULES FOR OPERATION OF PLAN DURING
13 ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO
14 MEET REQUIREMENTS.—

15 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-
16 RIOD.—During the plan adoption period—

17 “(A) the plan sponsor may not accept a
18 collective bargaining agreement or participation
19 agreement with respect to the multiemployer
20 plan that provides for—

21 “(i) a reduction in the level of con-
22 tributions for any participants,

23 “(ii) a suspension of contributions
24 with respect to any period of service, or

1 “(iii) any new direct or indirect exclu-
2 sion of younger or newly hired employees
3 from plan participation,

4 “(B) no amendment of the plan which in-
5 creases the liabilities of the plan by reason of
6 any increase in benefits, any change in the ac-
7 crual of benefits, or any change in the rate at
8 which benefits become nonforfeitable under the
9 plan may be adopted unless the amendment is
10 required as a condition of qualification under
11 part I of subchapter D of chapter 1 or to com-
12 ply with other applicable law, and

13 “(C) in the case of a plan in seriously en-
14 dangered status, the plan sponsor shall take all
15 reasonable actions which are consistent with the
16 terms of the plan and applicable law and which
17 are expected, based on reasonable assumptions,
18 to achieve—

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 Actions under subparagraph (C) include applications
25 for extensions of amortization periods under section

1 431(d), use of the shortfall funding method in mak-
2 ing funding standard account computations, amend-
3 ments to the plan's benefit structure, reductions in
4 future benefit accruals, and other reasonable actions
5 consistent with the terms of the plan and applicable
6 law.

7 “(2) COMPLIANCE WITH FUNDING IMPROVE-
8 MENT PLAN.—

9 “(A) IN GENERAL.—A plan may not be
10 amended after the date of the adoption of a
11 funding improvement plan under subsection (c)
12 so as to be inconsistent with the funding im-
13 provement plan.

14 “(B) NO REDUCTION IN CONTRIBU-
15 TIONS.—A plan sponsor may not during any
16 funding improvement period accept a collective
17 bargaining agreement or participation agree-
18 ment with respect to the multiemployer plan
19 that provides for—

20 “(i) a reduction in the level of con-
21 tributions for any participants,

22 “(ii) a suspension of contributions
23 with respect to any period of service, or

1 “(iii) any new direct or indirect exclu-
2 sion of younger or newly hired employees
3 from plan participation.

4 “(C) SPECIAL RULES FOR BENEFIT IN-
5 CREASES.—A plan may not be amended after
6 the date of the adoption of a funding improve-
7 ment plan under subsection (c) so as to in-
8 crease benefits, including future benefit accru-
9 als, unless—

10 “(i) in the case of a plan in seriously
11 endangered status, the plan actuary cer-
12 tifies that, after taking into account the
13 benefit increase, the plan is still reasonably
14 expected to meet the requirements under
15 subsection (c)(3) in accordance with the
16 schedule contemplated in the funding im-
17 provement plan, and

18 “(ii) in the case of a plan not in seri-
19 ously endangered status, the actuary cer-
20 tifies that such increase is paid for out of
21 contributions not required by the funding
22 improvement plan to meet the require-
23 ments under subsection (c)(3) in accord-
24 ance with the schedule contemplated in the
25 funding improvement plan.

1 “(3) FAILURE TO MEET REQUIREMENTS.—

2 “(A) IN GENERAL.—Notwithstanding sec-
3 tion 4971(g), if a plan fails to meet the require-
4 ments of subsection (c)(3) by the end of the
5 funding improvement period, the plan shall be
6 treated as having an accumulated funding defi-
7 ciency for purposes of section 4971 for the last
8 plan year in such period (and each succeeding
9 plan year until such requirements are met) in
10 an amount equal to the greater of the amount
11 of the contributions necessary to meet such re-
12 quirements or the amount of such accumulated
13 funding deficiency without regard to this para-
14 graph.

15 “(B) WAIVER.—In the case of a failure de-
16 scribed in subparagraph (A) which is due to
17 reasonable cause and not to willful neglect, the
18 Secretary of the Treasury may waive part or all
19 of the tax imposed by section 4971 of such
20 Code to the extent that the payment of such tax
21 would be excessive or otherwise inequitable re-
22 lative to the failure involved.

23 “(e) REHABILITATION PLAN MUST BE ADOPTED
24 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

1 “(1) IN GENERAL.—In any case in which a
2 multiemployer plan is in critical status for a plan
3 year, the plan sponsor, in accordance with this
4 subsection—

5 “(A) shall adopt a rehabilitation plan not
6 later than 240 days following the required date
7 for the actuarial certification of critical status
8 under subsection (b)(3)(A), and

9 “(B) within 30 days after the adoption of
10 the rehabilitation plan—

11 “(i) shall provide to the bargaining
12 parties 1 or more schedules showing re-
13 vised benefit structures, revised contribu-
14 tion structures, or both, which, if adopted,
15 may reasonably be expected to enable the
16 multiemployer plan to emerge from critical
17 status in accordance with the rehabilitation
18 plan, and

19 “(ii) may, if the plan sponsor deems
20 appropriate, prepare and provide the bar-
21 gaining parties with additional information
22 relating to contribution rates or benefit re-
23 ductions, alternative schedules, or other in-
24 formation relevant to emerging from crit-

1 ical status in accordance with the rehabili-
2 tation plan.

3 The schedule or schedules described in subparagraph
4 (B)(i) shall reflect reductions in future benefit ac-
5 cruals and increases in contributions that the plan
6 sponsor determines are reasonably necessary to
7 emerge from critical status. One schedule shall be
8 designated as the default schedule and such schedule
9 shall assume that there are no increases in contribu-
10 tions under the plan other than the increases nec-
11 essary to emerge from critical status after future
12 benefit accruals and other benefits (other than bene-
13 fits the reduction or elimination of which are not
14 permitted under section 411(d)(6)) have been re-
15 duced to the maximum extent permitted by law.

16 “(2) EXCEPTION FOR YEARS AFTER PROCESS
17 BEGINS.—Paragraph (1) shall not apply to a plan
18 year if such year is in a rehabilitation plan adoption
19 period or rehabilitation period by reason of the plan
20 being in critical status for a preceding plan year.
21 For purposes of this section, such preceding plan
22 year shall be the initial critical year with respect to
23 the rehabilitation plan to which it relates.

24 “(3) REHABILITATION PLAN.—For purposes of
25 this section—

1 “(A) IN GENERAL.—A rehabilitation plan
2 is a plan which consists of—

3 “(i) actions which will enable, under
4 reasonable actuarial assumptions, the plan
5 to cease to be in critical status by the end
6 of the rehabilitation period and may in-
7 clude reductions in plan expenditures (in-
8 cluding plan mergers and consolidations),
9 reductions in future benefit accruals or in-
10 creases in contributions, if agreed to by the
11 bargaining parties, or any combination of
12 such actions, or

13 “(ii) if the plan sponsor determines
14 that, based on reasonable actuarial as-
15 sumptions and upon exhaustion of all rea-
16 sonable measures, the plan can not reason-
17 ably be expected to emerge from critical
18 status by the end of the rehabilitation pe-
19 riod, reasonable measures to emerge from
20 critical status at a later time or to forestall
21 possible insolvency (within the meaning of
22 section 4245 of the Employee Retirement
23 Income Security Act of 1974).

24 Such plan shall include the schedules required
25 to be provided under paragraph (1)(B)(i). If

1 clause (ii) applies, such plan shall set forth the
2 alternatives considered, explain why the plan is
3 not reasonably expected to emerge from critical
4 status by the end of the rehabilitation period,
5 and specify when, if ever, the plan is expected
6 to emerge from critical status in accordance
7 with the rehabilitation plan.

8 “(B) UPDATES TO REHABILITATION PLAN
9 AND SCHEDULES.—

10 “(i) REHABILITATION PLAN.—The
11 plan sponsor shall annually update the re-
12 habilitation plan and shall file the update
13 with the plan’s annual report under section
14 104 of the Employee Retirement Income
15 Security Act of 1974.

16 “(ii) SCHEDULES.—The plan sponsor
17 may periodically update any schedule of
18 contribution rates provided under this sub-
19 section to reflect the experience of the
20 plan, except that the schedule or schedules
21 described in paragraph (1)(B)(i) shall be
22 updated at least once every 3 years.

23 “(iii) DURATION OF SCHEDULE.—A
24 schedule of contribution rates provided by
25 the plan sponsor and relied upon by bar-

1 gaining parties in negotiating a collective
2 bargaining agreement shall remain in ef-
3 fect for the duration of that collective bar-
4 gaining agreement.

5 “(C) DEFAULT SCHEDULE.—If the collec-
6 tive bargaining agreement providing for con-
7 tributions under a multiemployer plan that was
8 in effect at the time the plan entered critical
9 status expires and, after receiving a schedule
10 from the plan sponsor under paragraph
11 (1)(B)(i), the bargaining parties have not
12 adopted a collective bargaining agreement with
13 terms consistent with such a schedule, the de-
14 fault schedule described in the last sentence of
15 paragraph (1) shall go into effect with respect
16 to those bargaining parties.

17 “(4) REHABILITATION PERIOD.—For purposes
18 of this section—

19 “(A) IN GENERAL.—The rehabilitation pe-
20 riod for a plan in critical status is the 10-year
21 period beginning on the first day of the first
22 plan year of the multiemployer plan following
23 the earlier of—

1 “(i) the second anniversary of the
2 date of the adoption of the rehabilitation
3 plan, or

4 “(ii) the expiration of the collective
5 bargaining agreements in effect on the
6 date of the due date for the actuarial cer-
7 tification of critical status for the initial
8 critical year under subsection (a)(1) and
9 covering, as of such date at least 75 per-
10 cent of the active participants in such mul-
11 tiemployer plan.

12 If a plan emerges from critical status as pro-
13 vided under subparagraph (B) before the end of
14 such 10-year period, the rehabilitation period
15 shall end with the plan year preceding the plan
16 year for which the determination under sub-
17 paragraph (B) is made.

18 “(B) EMERGENCE.—A plan in critical sta-
19 tus shall remain in such status until a plan
20 year for which the plan actuary certifies, in ac-
21 cordance with subsection (b)(3)(A), that the
22 plan is not projected to have an accumulated
23 funding deficiency for the plan year or any of
24 the 9 succeeding plan years, without regard to

1 use of the shortfall method or any extension of
2 amortization periods under section 431(d).

3 “(5) PENALTY IF NO REHABILITATION PLAN
4 ADOPTED.—A failure of a plan sponsor to adopt a
5 rehabilitation plan by the date specified in para-
6 graph (1)(A) shall be treated for purposes of section
7 502(c)(2) of the Employee Retirement Income Secu-
8 rity Act of 1974 as a failure or refusal by the plan
9 administrator to file the annual report required to
10 be filed with the Secretary of Labor under section
11 101(b)(4) of such Act.

12 “(6) REHABILITATION PLAN ADOPTION PE-
13 RIOD.—For purposes of this section, the term ‘reha-
14 bilitation plan adoption period’ means the period be-
15 ginning on the date of the certification under sub-
16 section (b)(3)(A) for the initial critical year and end-
17 ing on the day before the first day of the rehabilita-
18 tion period.

19 “(7) LIMITATION ON REDUCTION IN RATES OF
20 FUTURE ACCRUALS.—Any reduction in the rate of
21 future accruals under any schedule described in
22 paragraph (1)(B)(i) shall not reduce the rate of fu-
23 ture accruals below—

24 “(A) a monthly benefit (payable as a single
25 life annuity commencing at the participant’s

1 normal retirement age) equal to 1 percent of
2 the contributions required to be made with re-
3 spect to a participant, or the equivalent stand-
4 ard accrual rate for a participant or group of
5 participants under the collective bargaining
6 agreements in effect as of the first day of the
7 initial critical year, or

8 “(B) if lower, the accrual rate under the
9 plan on such first day.

10 The equivalent standard accrual rate shall be deter-
11 mined by the plan sponsor based on the standard or
12 average contribution base units which the plan spon-
13 sor determines to be representative for active partici-
14 pants and such other factors as the plan sponsor de-
15 termines to be relevant. Nothing in this paragraph
16 shall be construed as limiting the ability of the plan
17 sponsor to prepare and provide the bargaining par-
18 ties with alternative schedules to the default sched-
19 ule that established lower or higher accrual and con-
20 tribution rates than the rates otherwise described in
21 this paragraph.

22 “(8) EMPLOYER IMPACT.—For the purposes of
23 this section, the plan sponsor shall consider the im-
24 pact of the rehabilitation plan and contribution
25 schedules authorized by this section on bargaining

1 parties with fewer than 500 employees and shall im-
2 plement the plan in a manner that encourages their
3 continued participation in the plan and minimizes fi-
4 nancial harm to employers and their workers.

5 “(f) RULES FOR OPERATION OF PLAN DURING
6 ADOPTION AND REHABILITATION PERIOD.—

7 “(1) COMPLIANCE WITH REHABILITATION
8 PLAN.—

9 “(A) IN GENERAL.—A plan may not be
10 amended after the date of the adoption of a re-
11 habilitation plan under subsection (e) so as to
12 be inconsistent with the rehabilitation plan.

13 “(B) SPECIAL RULES FOR BENEFIT IN-
14 CREASES.—A plan may not be amended after
15 the date of the adoption of a rehabilitation plan
16 under subsection (e) so as to increase benefits,
17 including future benefit accruals, unless the
18 plan actuary certifies that such increase is paid
19 for out of additional contributions not con-
20 templated by the rehabilitation plan, and, after
21 taking into account the benefit increase, the
22 multiemployer plan still is reasonably expected
23 to emerge from critical status by the end of the
24 rehabilitation period on the schedule con-
25 templated in the rehabilitation plan.

1 “(2) RESTRICTION ON LUMP SUMS AND SIMI-
2 LAR BENEFITS.—

3 “(A) IN GENERAL.—Effective on the date
4 the notice of certification of the plan’s critical
5 status for the initial critical year under sub-
6 section (b)(3)(D) is sent, and notwithstanding
7 section 411(d)(6), the plan shall not pay—

8 “(i) any payment, in excess of the
9 monthly amount paid under a single life
10 annuity (plus any social security supple-
11 ments described in the last sentence of sec-
12 tion 411(b)(1)(A)),

13 “(ii) any payment for the purchase of
14 an irrevocable commitment from an insurer
15 to pay benefits, and

16 “(iii) any other payment specified by
17 the Secretary by regulations.

18 “(B) EXCEPTION.—Subparagraph (A)
19 shall not apply to a benefit which under section
20 411(a)(11) may be immediately distributed
21 without the consent of the participant or to any
22 makeup payment in the case of a retroactive
23 annuity starting date or any similar payment of
24 benefits owed with respect to a prior period.

1 “(3) ADJUSTMENTS DISREGARDED IN WITH-
2 DRAWAL LIABILITY DETERMINATION.—Any benefit
3 reductions under this subsection shall be disregarded
4 in determining a plan’s unfunded vested benefits for
5 purposes of determining an employer’s withdrawal li-
6 ability under section 4201 of the Employee Retirement
7 Income Security Act of 1974.

8 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-
9 RIOD.—During the rehabilitation plan adoption
10 period—

11 “(A) the plan sponsor may not accept a
12 collective bargaining agreement or participation
13 agreement with respect to the multiemployer
14 plan that provides for—

15 “(i) a reduction in the level of con-
16 tributions for any participants,

17 “(ii) a suspension of contributions
18 with respect to any period of service, or

19 “(iii) any new direct or indirect exclu-
20 sion of younger or newly hired employees
21 from plan participation, and

22 “(B) no amendment of the plan which in-
23 creases the liabilities of the plan by reason of
24 any increase in benefits, any change in the ac-
25 crual of benefits, or any change in the rate at

1 which benefits become nonforfeitable under the
2 plan may be adopted unless the amendment is
3 required as a condition of qualification under
4 part I of subchapter D of chapter 1 or to com-
5 ply with other applicable law.

6 “(5) FAILURE TO MEET REQUIREMENTS.—

7 “(A) IN GENERAL.—Notwithstanding sec-
8 tion 4971(g), if a plan—

9 “(i) fails to meet the requirements of
10 subsection (e) by the end of the rehabilita-
11 tion period, or

12 “(ii) has received a certification under
13 subsection (b)(3)(A)(ii) for 3 consecutive
14 plan years that the plan is not making the
15 scheduled progress in meeting its require-
16 ments under the rehabilitation plan,

17 the plan shall be treated as having an accumu-
18 lated funding deficiency for purposes of section
19 4971 for the last plan year in such period (and
20 each succeeding plan year until such require-
21 ments are met) in an amount equal to the
22 greater of the amount of the contributions nec-
23 essary to meet such requirements or the
24 amount of such accumulated funding deficiency
25 without regard to this paragraph.

1 “(B) WAIVER.—In the case of a failure de-
2 scribed in subparagraph (A) which is due to
3 reasonable cause and not to willful neglect, the
4 Secretary may waive part or all of the tax im-
5 posed by section 4971 to the extent that the
6 payment of such tax would be excessive or oth-
7 erwise inequitable relative to the failure in-
8 volved.

9 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
10 DECISIONS.—If, within 60 days of the due date for adop-
11 tion of a funding improvement plan under subsection (c)
12 or a rehabilitation plan under subsection (e), the plan
13 sponsor of a plan in endangered status or a plan in critical
14 status has not agreed on a funding improvement plan or
15 rehabilitation plan, then any member of the board or
16 group that constitutes the plan sponsor may require that
17 the plan sponsor enter into an expedited dispute resolution
18 procedure for the development and adoption of a funding
19 improvement plan or rehabilitation plan.

20 “(h) NONBARGAINED PARTICIPATION.—

21 “(1) BOTH BARGAINED AND NONBARGAINED
22 EMPLOYEE-PARTICIPANTS.—In the case of an em-
23 ployer that contributes to a multiemployer plan with
24 respect to both employees who are covered by one or
25 more collective bargaining agreements and to em-

1 employees who are not so covered, if the plan is in en-
2 dangered status or in critical status, benefits of and
3 contributions for the nonbargained employees, in-
4 cluding surcharges on those contributions, shall be
5 determined as if those nonbargained employees were
6 covered under the first to expire of the employer's
7 collective bargaining agreements in effect when the
8 plan entered endangered or critical status.

9 “(2) NONBARGAINED EMPLOYEES ONLY.—In
10 the case of an employer that contributes to a multi-
11 employer plan only with respect to employees who
12 are not covered by a collective bargaining agreement,
13 this section shall be applied as if the employer were
14 the bargaining parties, and its participation agree-
15 ment with the plan was a collective bargaining
16 agreement with a term ending on the first day of the
17 plan year beginning after the employer is provided
18 the schedule or schedules described in subsections
19 (c) and (e).

20 “(3) EMPLOYEES COVERED BY A COLLECTIVE
21 BARGAINING AGREEMENT.—The determination as to
22 whether an employee covered by a collective bar-
23 gaining agreement for purposes of this section shall
24 be made without regard to the special rule in Treas-
25 ury Regulation section 1.410(b)–6(d)(ii)(D).

1 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
2 poses of this section—

3 “(1) BARGAINING PARTY.—The term ‘bar-
4 gaining party’ means—

5 “(A)(i) except as provided in clause (ii), an
6 employer who has an obligation to contribute
7 under the plan; or

8 “(ii) in the case of a plan described under
9 section 404(c), or a continuation of such a plan,
10 the association of employers that is the em-
11 ployee settlor of the plan; and

12 “(B) an employee organization which, for
13 purposes of collective bargaining, represents
14 plan participants employed by an employer who
15 has an obligation to contribute under the plan.

16 “(2) FUNDED PERCENTAGE.—The term ‘fund-
17 ed percentage’ means the percentage equal to a
18 fraction—

19 “(A) the numerator of which is the value
20 of the plan’s assets, as determined under sec-
21 tion 431(c)(2), and

22 “(B) the denominator of which is the ac-
23 crued liability of the plan, determined using ac-
24 tuarial assumptions described in section
25 431(c)(3).

1 “(3) ACCUMULATED FUNDING DEFICIENCY.—
2 The term ‘accumulated funding deficiency’ has the
3 meaning given such term in section 412(a).

4 “(4) ACTIVE PARTICIPANT.—The term ‘active
5 participant’ means, in connection with a multiem-
6 ployer plan, a participant who is in covered service
7 under the plan.

8 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
9 tive participant’ means, in connection with a multi-
10 employer plan, a participant, or the beneficiary or
11 alternate payee of a participant, who—

12 “(A) is not in covered service under the
13 plan, and

14 “(B) is in pay status under the plan or has
15 a nonforfeitable right to benefits under the
16 plan.

17 “(6) PAY STATUS.—A person is in pay status
18 under a multiemployer plan if—

19 “(A) at any time during the current plan
20 year, such person is a participant or beneficiary
21 under the plan and is paid an early, late, nor-
22 mal, or disability retirement benefit under the
23 plan (or a death benefit under the plan related
24 to a retirement benefit), or

1 “(B) to the extent provided in regulations
2 of the Secretary, such person is entitled to such
3 a benefit under the plan.

4 “(7) OBLIGATION TO CONTRIBUTE.—The term
5 ‘obligation to contribute’ has the meaning given such
6 term under section 4212(a) of the Employee Retirement
7 Income Security Act of 1974.

8 “(8) ACTUARIAL METHOD.—Notwithstanding
9 any other provision of this section, the actuary’s de-
10 terminations with respect to a plan’s normal cost,
11 actuarial accrued liability, and improvements in a
12 plan’s funded percentage under this section shall be
13 based upon the unit credit funding method (whether
14 or not that method is used for the plan’s actuarial
15 valuation).

16 “(9) PLAN SPONSOR.—In the case of a plan de-
17 scribed under section 404(c), or a continuation of
18 such a plan, the term ‘plan sponsor’ means the bar-
19 gaining parties described under paragraph (1).”

20 (b) EFFECTIVE DATES.—

21 (1) IN GENERAL.—The amendment made by
22 this section shall apply with respect to plan years be-
23 ginning after 2006.

24 (2) SPECIAL RULE FOR CERTAIN RESTORED
25 BENEFITS.—In the case of a multiemployer plan—

1 (A) with respect to which benefits were re-
2 duced pursuant to a plan amendment adopted
3 on or after January 1, 2002, and before June
4 30, 2005, and

5 (B) which, pursuant to the plan document,
6 the trust agreement, or a formal written com-
7 munication from the plan sponsor to partici-
8 pants provided before June 30, 2005, provided
9 for the restoration of such benefits,
10 the amendments made by this section shall not apply
11 to such benefit restorations to the extent that any
12 restriction on the providing or accrual of such bene-
13 fits would otherwise apply by reason of such amend-
14 ments.

15 **PART III—SUNSET OF FUNDING RULES**

16 **SEC. 216. SUNSET OF FUNDING RULES.**

17 (a) REPORT.—Not later than December 31, 2011,
18 the Secretary of Labor, the Secretary of the Treasury, and
19 the Executive Director of the Pension Benefit Guaranty
20 Corporation shall conduct a study of the effect of the
21 amendments made by this subtitle on the operation and
22 funding status of multiemployer plans and shall report the
23 results of such study, including any recommendations for
24 legislation, to the Congress.

1 (b) MATTERS INCLUDED IN STUDY.—The study re-
2 quired under subsection (a) shall include—

3 (1) the effect of funding difficulties, funding
4 rules in effect before the date of the enactment of
5 this Act, and the amendments made by this subtitle
6 on small businesses participating in multiemployer
7 plans,

8 (2) the effect on the financial status of small
9 employers of—

10 (A) funding targets set in funding im-
11 provement and rehabilitation plans and associ-
12 ated contribution increases,

13 (B) funding deficiencies,

14 (C) excise taxes,

15 (D) withdrawal liability,

16 (E) the possibility of alternatives schedules
17 and procedures for financially-troubled employ-
18 ers, and

19 (F) other aspects of the multiemployer sys-
20 tem, and

21 (3) the role of the multiemployer pension plan
22 system in helping small employers to offer pension
23 benefits.

24 (c) SUNSET.—

1 (1) IN GENERAL.—Except as provided in this
2 subsection, notwithstanding any other provision of
3 this Act, the provisions of, and the amendments
4 made by, this subtitle shall not apply to plan years
5 beginning after December 31, 2014, and the Em-
6 ployee Retirement Income Security Act of 1974 and
7 the Internal Revenue Code of 1986 shall be applied
8 to such plan years under the provisions of sections
9 302 through 308 of such Act and 412 of such Code
10 (as in effect before the amendments made by this
11 Act).

12 (2) FUNDING IMPROVEMENT AND REHABILITA-
13 TION PLANS.—If a plan is operating under a fund-
14 ing improvement or rehabilitation plan under section
15 305 of such Act or 432 of such Code for its last
16 year beginning before January 1, 2015, such plan
17 shall continue to operate under such funding im-
18 provement or rehabilitation plan during any period
19 after December 31, 2014, such funding improvement
20 or rehabilitation plan is in effect and all provisions
21 of such Act or Code relating to the operation of such
22 funding improvement or rehabilitation plan shall
23 continue in effect during such period.

24 (3) AMORTIZATION SCHEDULES.—In the case
25 of any amount amortized under section 304(b) of

1 such Act or 431 of such Code (as in effect after the
2 amendments made by this subtitle) over any period
3 beginning with a plan year beginning before January
4 1, 2015, such amount shall, in lieu of the amortiza-
5 tion which would apply after the application of this
6 subsection, continue to be amortized under such sec-
7 tion 304 or 431 (as so in effect).

8 **Subtitle B—Deduction and Related**
9 **Provisions**

10 **SEC. 221. DEDUCTION LIMITS FOR MULTIEMPLOYER**
11 **PLANS.**

12 (a) INCREASE IN DEDUCTION.—Section
13 404(a)(1)(D) of the Internal Revenue Code of 1986, as
14 amended by this Act, is amended to read as follows:

15 “(D) AMOUNT DETERMINED ON BASIS OF
16 UNFUNDED CURRENT LIABILITY.—

17 “(i) IN GENERAL.—In the case of a
18 defined benefit plan which is a multiem-
19 ployer plan, except as provided in regula-
20 tions, the maximum amount deductible
21 under the limitations of this paragraph
22 shall not be less than the unfunded current
23 liability of the plan.

24 “(ii) UNFUNDED CURRENT LIABIL-
25 ITY.—For purposes of clause (i), the term

1 ‘unfunded current liability’ means the ex-
2 cess (if any) of—

3 “(I) 140 percent of the current
4 liability of the plan determined under
5 section 431(c)(6)(C), over

6 “(II) the value of the plan’s as-
7 sets determined under section
8 431(c)(2).”.

9 (b) EXCEPTION FROM LIMITATION ON DEDUCTION
10 WHERE COMBINATION OF DEFINED CONTRIBUTION AND
11 DEFINED BENEFIT PLANS.—

12 (1) IN GENERAL.—Section 404(a)(7)(C) of such
13 Code, as amended by this Act, is amended by adding
14 at the end the following new clause:

15 “(v) MULTIEMPLOYER PLANS.—In ap-
16 plying this paragraph, any multiemployer
17 plan shall not be taken into account.”.

18 (2) CONFORMING AMENDMENT.—Section
19 404(a)(7)(A) of such Code is amended by striking
20 the last sentence.

21 (c) EFFECTIVE DATES.—

22 (1) DEDUCTION LIMIT.—The amendment made
23 by subsection (a) shall apply to years beginning after
24 December 31, 2006.

1 (2) EXCEPTION.—The amendments made by
2 subsection (b) shall apply to years beginning after
3 December 31, 2005.

4 **SEC. 222. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**
5 **TIEMPLOYER HEALTH PLAN.**

6 (a) IN GENERAL.—Section 420(e) of the Internal
7 Revenue Code of 1986 (relating to definitions and special
8 rules) is amended by adding at the end the following new
9 paragraph:

10 “(5) APPLICATION TO MULTIEMPLOYER
11 PLAN.—In the case of any plan to which section
12 404(c) applies (or any successor plan primarily cov-
13 ering employees in the building and construction in-
14 dustry)—

15 “(A) the prohibition under subsection (a)
16 on the application of this section to a multiem-
17 ployer plan shall not apply, and

18 “(B) this section shall be applied to any
19 such plan—

20 “(i) by treating any reference in this
21 section to an employer as a reference to all
22 employers maintaining the plan (or, if ap-
23 propriate, the plan sponsor), and

24 “(ii) in accordance with such modi-
25 fications of this section (and the provisions

1 of this title and the Employee Retirement
2 Income Security Act of 1974 relating to
3 this section) as the Secretary determines
4 appropriate to reflect the fact the plan is
5 not maintained by a single employer.”

6 (b) AMENDMENTS OF ERISA.—

7 (1) Section 101(e)(3) of the Employee Retirement
8 Income Security Act of 1974 (29 U.S.C.
9 1021(e)(3)) is amended by striking “American Jobs
10 Creation Act of 2004” and inserting “Pension Security
11 and Transparency Act of 2005”.

12 (2) Section 403(c)(1) of such Act (29 U.S.C.
13 1103(c)(1)) is amended by striking “American Jobs
14 Creation Act of 2004” and inserting “Pension Security
15 and Transparency Act of 2005”.

16 (3) Section 408(b)(13) of such Act (29 U.S.C.
17 1108(b)(13)) is amended by striking “American
18 Jobs Creation Act of 2004” and inserting “Pension
19 Security and Transparency Act of 2005”.

20 (c) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to transfers made in taxable years
22 beginning after December 31, 2004.

1 **TITLE III—INTEREST RATE**
2 **ASSUMPTIONS**

3 **SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINA-**
4 **TION OF LUMP SUM DISTRIBUTIONS.**

5 (a) AMENDMENTS OF ERISA.—

6 (1) IN GENERAL.—Section 205(g)(3)(A) of the
7 Employee Retirement Income Security Act of 1974
8 (29 U.S.C. 1055(g)(3)(A)) is amended by adding at
9 the end the following new sentence: “In the case of
10 plan years beginning after 2006, the preceding sen-
11 tence shall be applied by using the applicable yield
12 curve method under subparagraph (C) rather than
13 the applicable interest rate.”.

14 (2) APPLICABLE YIELD CURVE METHOD.—Sec-
15 tion 205(g)(3) of such Act (29 U.S.C. 1055(g)(3))
16 is amended by adding at the end the following new
17 subparagraphs:

18 “(C) APPLICABLE YIELD CURVE METH-
19 OD.—For purposes of subparagraph (A), the
20 term ‘applicable yield curve method’ means—

21 “(i) the phase-in yield curve method
22 in the case of plan years beginning in
23 2007, 2008, and 2009, and

24 “(ii) the yield curve method for years
25 beginning after 2009.

1 “(D) YIELD CURVE METHOD.—For pur-
2 poses of this paragraph—

3 “(i) IN GENERAL.—The yield curve
4 method is a method under which present
5 value is determined—

6 “(I) by using interest rates
7 drawn from a yield curve which is pre-
8 scribed by the Secretary of the Treas-
9 ury and which reflects the yield on
10 high-quality corporate bonds with
11 varying maturities, and

12 “(II) by matching the timing of
13 the expected benefit payments under
14 the plan to the interest rates on such
15 yield curve.

16 “(ii) PUBLICATION.—Each month the
17 Secretary of the Treasury shall publish any
18 yield curve prescribed under this subpara-
19 graph which shall apply to plan years be-
20 ginning in such month and such yield
21 curve shall be based on average interest
22 rates for business days occurring during
23 the 3 preceding months.

24 “(E) PHASE-IN YIELD CURVE METHOD.—

1 “(i) IN GENERAL.—Present value de-
2 termined under the phase-in yield curve
3 method shall be equal to the sum of—

4 “(I) the applicable percentage of
5 such amount determined under the
6 yield curve method described in sub-
7 paragraph (D), and

8 “(II) the product of such amount
9 determined by using the applicable in-
10 terest rate and a percentage equal to
11 100 percent minus the applicable per-
12 centage.

13 “(ii) APPLICABLE PERCENTAGE.—For
14 purposes of clause (i), the applicable per-
15 centage is 25 percent for plan years begin-
16 ning in 2007, 50 percent for plan years be-
17 ginning in 2008, and 75 percent for plan
18 years beginning in 2009.”.

19 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

20 (1) IN GENERAL.—Section 417(e)(3)(A) of the
21 Internal Revenue Code of 1986 (relating to deter-
22 mination of present value) is amended by adding at
23 the end the following new sentence: “In the case of
24 plan years beginning after 2006, the preceding sen-
25 tence shall be applied by using the applicable yield

1 curve method under subparagraph (C) rather than
2 the applicable interest rate.”

3 (2) APPLICABLE YIELD CURVE METHOD.—Sec-
4 tion 417(e) of such Code is amended by adding at
5 the end the following new subparagraphs:

6 “(C) APPLICABLE YIELD CURVE METH-
7 OD.—For purposes of subparagraph (A), the
8 term ‘applicable yield curve method’ means—

9 “(i) the phase-in yield curve method
10 in the case of plan years beginning in
11 2007, 2008, and 2009, and

12 “(ii) the yield curve method for years
13 beginning after 2009.

14 “(D) YIELD CURVE METHOD.—For pur-
15 poses of this paragraph—

16 “(i) IN GENERAL.—The yield curve
17 method is a method under which present
18 value is determined—

19 “(I) by using interest rates
20 drawn from a yield curve which is pre-
21 scribed by the Secretary and which re-
22 flects the yield on high-quality cor-
23 porate bonds with varying maturities,
24 and

1 “(II) by matching the timing of
2 the expected benefit payments under
3 the plan to the interest rates on such
4 yield curve.

5 “(ii) PUBLICATION.—Each month the
6 Secretary shall publish any yield curve pre-
7 scribed under this subparagraph which
8 shall apply to plan years beginning in such
9 month and such yield curve shall be based
10 on average interest rates for business days
11 occurring during the 3 preceding months.

12 “(E) PHASE-IN YIELD CURVE METHOD.—

13 “(i) IN GENERAL.—Present value de-
14 termined under the phase-in yield curve
15 method shall be equal to the sum of—

16 “(I) the applicable percentage of
17 such amount determined under the
18 yield curve method described in sub-
19 paragraph (D), and

20 “(II) the product of such amount
21 determined by using the applicable in-
22 terest rate and a percentage equal to
23 100 percent minus the applicable per-
24 centage.

1 “(ii) APPLICABLE PERCENTAGE.—For
2 purposes of clause (i), the applicable per-
3 centage is 25 percent for plan years begin-
4 ning in 2007, 50 percent for plan years be-
5 ginning in 2008, and 75 percent for plan
6 years beginning in 2009.”.

7 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
8 plan shall not fail to meet the requirements of section
9 204(g) of the Employee Retirement Income Security Act
10 of 1974 or section 411(d)(6) of the Internal Revenue Code
11 of 1986 solely by reason of the adoption by the plan of
12 an amendment necessary to meet the requirements of the
13 amendments made by this section.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply with respect to plan years begin-
16 ning after 2006.

17 **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**
18 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**
19 **TRIBUTIONS.**

20 (a) IN GENERAL.—Clause (ii) of section
21 415(b)(2)(E) of the Internal Revenue Code of 1986 is
22 amended to read as follows:

23 “(ii) For purposes of adjusting any
24 benefit under subparagraph (B) for any
25 form of benefit subject to section

1 417(e)(3), clause (i) shall be applied by
2 substituting ‘5.5 percent’ for ‘5 percent’.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to years beginning after Decem-
5 ber 31, 2005.

6 **SEC. 303. RESTRICTIONS ON FUNDING OF NONQUALIFIED**
7 **DEFERRED COMPENSATION PLANS BY EM-**
8 **PLOYERS MAINTAINING UNDERFUNDED OR**
9 **TERMINATED SINGLE-EMPLOYER PLANS.**

10 (a) AMENDMENTS OF ERISA.—

11 (1) IN GENERAL.—Part 3 of subtitle A of title
12 I of the Employee Retirement Income Security Act
13 of 1974 (29 U.S.C. 1081 et seq.), as amended by
14 this Act, is amended by adding at the end the fol-
15 lowing new section:

16 “NOTICE OF FUNDING OF NONQUALIFIED DEFERRED
17 COMPENSATION PLANS

18 “SEC. 306. (a) NOTICE AND ACCESS.—

19 “(1) NOTICE RELATING TO RESTRICTED PE-
20 RIOD.—The plan administrator of a defined benefit
21 plan which is a single-employer plan shall notify
22 each plan sponsor of the plan within a reasonable
23 period of time after the occurrence of an event which
24 results in a restricted period with respect to the
25 plan. Such notice shall include information—

1 “(A) as to the duration of the restricted
2 period, and

3 “(B) the restrictions under section
4 409A(b)(3) of the Internal Revenue Code of
5 1986 which apply during the restricted period
6 to the plan sponsor and any member of a con-
7 trolled group which includes such sponsor.

8 “(2) NOTICE OF EXISTENCE OF, AND TRANS-
9 FERS TO, NONQUALIFIED DEFERRED COMPENSATION
10 PLANS.—

11 “(A) INITIAL NOTICE.—Within 30 days of
12 receipt of a notice under paragraph (1), each
13 plan sponsor shall notify the plan administrator
14 of the plan described in paragraph (1)—

15 “(i) of nonqualified deferred com-
16 pensation plans maintained by the plan
17 sponsor or any member of a controlled
18 group which includes such sponsor, and

19 “(ii) the amount of any assets trans-
20 ferred or otherwise reserved by the plan
21 sponsor or such member in violation of sec-
22 tion 409A(b)(3) of such Code during any
23 portion of the restricted period occurring
24 on or before the date the plan sponsor pro-
25 vides such notice.

1 “(B) ADDITIONAL NOTICES.—If, after the
2 date on which notice is provided under subpara-
3 graph (A) and during any portion of the re-
4 maining restricted period specified in the notice
5 provided under paragraph (1), the plan sponsor
6 of a plan described in paragraph (1) or a mem-
7 ber of a controlled group which includes such
8 sponsor—

9 “(i) transfers or reserves assets in vio-
10 lation of section 409A(b)(3) of such Code,
11 or

12 “(ii) establishes a new nonqualified
13 deferred compensation plan,
14 the plan sponsor shall notify the plan adminis-
15 trator of the plan described in paragraph (1) of
16 such transfer, reservation, or establishment
17 within 3 days of the date of such action.

18 “(3) ACCESS TO FINANCIAL DATA.—Any fidu-
19 ciary of the plan shall have access to the financial
20 records of a plan sponsor or any member of a con-
21 trolled group which includes such sponsor to deter-
22 mine if assets were transferred or otherwise reserved
23 in violation of section 409A(b)(3) of such Code.

24 “(4) FORM AND MANNER.—The Secretary may
25 prescribe the form and manner of a notice required

1 under this section. Such a notice shall be written in
2 a manner calculated to be understood by the average
3 plan participant and may be delivered in written,
4 electronic, or other appropriate form to the extent
5 that such form is reasonably accessible to the recipi-
6 ent.

7 “(b) RESTRICTED PERIOD.—For purposes of this
8 section, the term ‘restricted period’ means, with respect
9 to any plan described in subsection (a)(1)—

10 “(1) any period—

11 “(A) beginning on the first day of a plan
12 year following a plan year for which the plan’s
13 adjusted funding target attainment percentage
14 (as defined in section 303) was less than 60
15 percent (determined as of the close of such
16 year), and

17 “(B) ending on the last day of the first pe-
18 riod of 2 consecutive plan years (beginning on
19 or after such first day) for which such percent-
20 age was at least 60 percent,

21 “(2) any period the plan sponsor is in bank-
22 ruptcy, and

23 “(3) the 12-month period beginning on the date
24 which is 6 months before the termination date of the
25 plan if, as of the termination date, the plan is not

1 sufficient for benefit liabilities (within the meaning
2 of section 4041).

3 In the case of a plan which is in at-risk status, paragraph
4 (1) shall be applied by substituting ‘80 percent’ for ‘60
5 percent’ each place it appears.

6 “(c) NONQUALIFIED DEFERRED COMPENSATION
7 PLAN.—For purposes of this section—

8 “(1) IN GENERAL.—The term ‘nonqualified de-
9 ferred compensation plan’ means any plan that pro-
10 vides for the deferral of compensation, other than—

11 “(A) a qualified employer plan, and

12 “(B) any bona fide vacation leave, sick
13 leave, compensatory time, disability pay, or
14 death benefit plan.

15 “(2) QUALIFIED EMPLOYER PLAN.—The term
16 ‘qualified employer plan’ means—

17 “(A) any plan, contract, pension, account,
18 or trust described in subparagraph (A) or (B)
19 of section 219(g)(5) of the Internal Revenue
20 Code of 1986 (without regard to subparagraph
21 (A)(iii)),

22 “(B) any eligible deferred compensation
23 plan (within the meaning of section 457(b)) of
24 such Code, and

1 “(C) any plan described in section 415(m)
2 of such Code.

3 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
4 The term ‘plan’ includes any agreement or arrange-
5 ment, including an agreement or arrangement that
6 includes one person.

7 “(d) OTHER DEFINITIONS.—For purposes of this
8 section—

9 “(1) APPLICABLE COVERED EMPLOYEE.—

10 “(A) IN GENERAL.—The term ‘applicable
11 covered employee’ mean any—

12 “(i) covered employee of a plan spon-
13 sor,

14 “(ii) covered employee of a member of
15 a controlled group which includes the plan
16 sponsor, and

17 “(iii) former employee who was a cov-
18 ered employee at the time of termination of
19 employment with the plan sponsor or a
20 member of a controlled group which in-
21 cludes the plan sponsor.

22 “(B) COVERED EMPLOYEE.—The term
23 ‘covered employee’ has the meaning given such
24 term by section 162(m)(3) of the Internal Rev-
25 enue Code of 1986.

1 of 1986 (and any earnings properly allo-
2 cable to the assets); or

3 “(ii) amounts equivalent to the assets
4 and earnings described in clause (i); or

5 “(B) a plan sponsor, or a member of a
6 controlled group which includes the plan spon-
7 sor, to compel the production of records the fi-
8 duciary is entitled to under section 306.”; and

9 (ii) by adding at the end the following
10 new flush sentence:

11 “For purposes of paragraph (11), any term used in such
12 paragraph which is also used in section 306 shall have
13 the meaning given such term by section 306.”.

14 (B) AWARDING OF FEES.—Section 502(g)
15 of such Act (29 U.S.C. 1132(g)) is amended by
16 adding at the end the following new paragraph:

17 “(3) ACTIONS TO RECOVER ASSETS TRANS-
18 FERRED TO NONQUALIFIED DEFERRED COMPENSA-
19 TION PLANS.—If, in any action under subsection
20 (a)(11) by a fiduciary for or on behalf of a plan to
21 enforce section 306 of this Act and section
22 409A(b)(3), a judgment is awarded in favor of the
23 plan, the court may, in addition to any other
24 amount, award the plan reasonable attorney’s fees

1 and costs of the action, to be paid by the defend-
2 ant”.

3 (3) CLERICAL AMENDMENT.—The table of con-
4 tents in section 1 of such Act, as amended by this
5 Act, is amended by adding at the end the following
6 new item:

“Sec. 306. Restrictions on funding of nonqualified deferred compensation
plans.”.

7 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

8 (1) IN GENERAL.—Subsection (b) of section
9 409A of the Internal Revenue Code of 1986 (pro-
10 viding rules relating to funding) is amended by re-
11 designating paragraphs (3) and (4) as paragraphs
12 (4) and (5), respectively, and by inserting after
13 paragraph (2) the following new paragraph:

14 “(3) EMPLOYERS OF UNDERFUNDED OR TERMI-
15 NATED DEFINED BENEFIT PLANS.—During any re-
16 stricted period—

17 “(A) a plan sponsor of a defined benefit
18 plan which is a single-employer plan, or

19 “(B) any member of a controlled group
20 which includes such sponsor,

21 shall not directly or indirectly transfer assets, or di-
22 rectly or indirectly otherwise reserve assets, in a
23 trust (or other arrangement determined by the Sec-
24 retary) for purposes of paying deferred compensa-

1 tion of an applicable covered employee under a non-
2 qualified deferred compensation plan of the plan
3 sponsor or member. Any assets transferred or re-
4 served in violation of the preceding sentence shall,
5 for purposes of section 83, be treated as property
6 transferred in connection with the performance of
7 services whether or not such assets are available to
8 satisfy claims of general creditors. For purposes of
9 this paragraph, any term used in this paragraph
10 which is also used in section 306 of the Employee
11 Retirement Income Security Act of 1974 shall have
12 the meaning given such term by such section.”.

13 (2) CONFORMING AMENDMENTS.—Paragraphs
14 (4) and (5) of section 409A(b) of such Code, as re-
15 designated by subsection (a) of this subsection, are
16 each amended by striking “paragraph (1) or (2)”
17 each place it appears and inserting “paragraph (1),
18 (2), or (3)”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to transfers or other reservation
21 of assets after December 31, 2006.

1 **SEC. 304. MODIFICATION OF PENSION FUNDING REQUIRE-**
2 **MENTS FOR PLANS SUBJECT TO CURRENT**
3 **TRANSITION RULE.**

4 (a) **PLAN YEAR BEFORE NEW FUNDING RULES.—**
5 Section 769(c)(3) of the Retirement Protection Act of
6 1994, as added by section 201 of the Pension Funding
7 Equity Act of 2004, is amended by striking “and 2005”
8 and inserting “, 2005, and 2006”.

9 (b) **PLAN YEARS AFTER NEW FUNDING RULES.—**

10 (1) **IN GENERAL.—**In the case of a plan that—

11 (A) was not required to pay a variable rate
12 premium for the plan year beginning in 1996,

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

18 (C) is sponsored by a company that is en-
19 gaged primarily in the interurban or interstate
20 passenger bus service,

21 the rules described in subsection (b) shall apply for
22 any plan year beginning after 2006.

23 (2) **MODIFIED RULES.—**The rules described in
24 this subsection are as follows:

25 (A) For purposes of—

1 (i) determining unfunded benefits
2 under section 4006(a)(3)(E)(ii) of the Em-
3 ployee Retirement Income Security Act of
4 1974, and

5 (ii) determining any present value or
6 making any computation under section 412
7 and section 430 of the Internal Revenue
8 Code of 1986 and sections 302 and 303 of
9 such Act,

10 the mortality table shall be the mortality table used
11 by the plan.

12 (B) Notwithstanding section 303(f)(4) of
13 such Act or 430(f)(4) of such Code, for pur-
14 poses of section 303(c)(4)(A)(ii) of such Act
15 and 430(c)(4)(A)(ii) of such Code, the value of
16 plan assets shall not be reduced by the amount
17 of the prefunding balance if, pursuant to a
18 binding written agreement with the Pension
19 Benefit Guaranty Corporation entered into be-
20 fore January 1, 2006, the prefunding balance is
21 not available to reduce the minimum required
22 contribution for the plan year.

23 (3) DEFINITIONS.—Any term used in this sec-
24 tion which is also used in section 303 of such Act

1 or section 430 of such Code shall have the meaning
2 provided such term in such section.

3 (4) CONFORMING AMENDMENT.—Section 769
4 of the Retirement Protection Act of 1994 is amend-
5 ed by striking subsection (c).

6 (5) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to plan years begin-
8 ning after 2006.

9 **TITLE IV—IMPROVEMENTS IN**
10 **PBGC GUARANTEE PROVISIONS**

11 **SEC. 401. INCREASES IN PBGC PREMIUMS.**

12 (a) FLAT-RATE PREMIUMS.—

13 (1) IN GENERAL.—Section 4006(a)(3)(A)(i) of
14 the Employee Retirement Income Security Act of
15 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended to
16 read as follows:

17 “(i) in the case of a single-employer
18 plan, an amount equal to—

19 “(I) for plan years beginning
20 after December 31, 1990, and before
21 January 1, 2006, \$19, or

22 “(II) for plan years beginning
23 after December 31, 2005, the amount
24 determined under subparagraph (H),

1 plus the additional premium (if any) deter-
2 mined under subparagraph (E) for each in-
3 dividual who is a participant in such plan
4 during the plan year;”.

5 (2) AMOUNT OF PREMIUM AFTER 2005.—Sec-
6 tion 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)),
7 as amended by sections 406 and 407, is amended by
8 adding at the end the following:

9 “(H) AMOUNT OF PREMIUM.—

10 “(i) IN GENERAL.—The amount de-
11 termined under this subparagraph is the
12 greater of \$30 or in the case of plan years
13 beginning after December 31, 2006, the
14 adjusted amount determined under clause
15 (ii).

16 “(ii) ADJUSTED AMOUNT.—The ad-
17 justed amount determined under this
18 clause is the product derived by multi-
19 plying \$30 by the ratio of—

20 “(I) the contribution and benefit
21 base (determined under section 230 of
22 the Social Security Act) in effect in
23 the calendar year in which the plan
24 year begins, to

1 (2) EFFECTIVE DATE.—The amendments made
2 by paragraph (1) shall apply with respect to plan
3 years beginning after 2006.

4 (c) PREMIUM RATE FOR CERTAIN TERMINATED SIN-
5 GLE-EMPLOYER PLANS.—

6 (1) IN GENERAL.—Section 4006(a) of such Act
7 (29 U.S.C. 1306(a)) is amended by adding at the
8 end the following:

9 “(7) PREMIUM RATE FOR CERTAIN TERMI-
10 NATED SINGLE-EMPLOYER PLANS.—

11 “(A) IN GENERAL.—If there is a termi-
12 nation of a single-employer plan under clause
13 (ii) or (iii) of section 4041(c)(2)(B) or section
14 4042, there shall be payable to the corporation,
15 with respect to each applicable 12-month pe-
16 riod, a premium at a rate equal to \$1,250 mul-
17 tiplied by the number of individuals who were
18 participants in the plan immediately before the
19 termination date. Such premium shall be in ad-
20 dition to any other premium under this section.

21 “(B) SPECIAL RULE FOR PLANS TERMI-
22 NATED IN BANKRUPTCY REORGANIZATION.—
23 Subparagraph (A) shall not apply to a single-
24 employer plan terminated under section
25 4041(c)(2)(B)(ii) or under section 4042 during

1 pendency of any bankruptcy reorganization pro-
2 ceeding under chapter 11 of title 11, United
3 States Code, (or under any similar law of a
4 State or political subdivision of a State) until
5 the plan sponsor emerges from bankruptcy.

6 “(C) APPLICABLE 12-MONTH PERIOD.—
7 For purposes of subparagraph (A)—

8 “(i) IN GENERAL.—The term ‘applica-
9 ble 12-month period’ means—

10 “(I) the 12-month period begin-
11 ning with the first month following
12 the month in which the termination
13 date occurs, and

14 “(II) each of the first two 12-
15 month periods immediately following
16 the period described in subclause (I).

17 “(ii) PLANS TERMINATED IN BANK-
18 RUPTCY REORGANIZATION.—In the case of
19 a plan described under subparagraph (B),
20 the 12-month period described in clause
21 (i)(I) shall be the 12-month period begin-
22 ning with the first month following the
23 month which includes the date the plan
24 sponsor emerges from bankruptcy.

1 (2) CONSIDERATIONS.—In developing the re-
2 port described under paragraph (1), the Corporation
3 shall consider—

4 (A) the national average wage index (as
5 defined in section 209(k)(1) of the Social Secu-
6 rity Act (42 U.S.C. 409(k)(1)));

7 (B) the finances of the Corporation as of
8 the date of such report and an actuarial evalua-
9 tion of the expected operations and status of
10 the funds established under section 4005 of
11 such title IV (29 U.S.C. 1305) for the 5 years
12 succeeding such date;

13 (C) the impact of any increases in such
14 premium rate on plan sponsors subject to such
15 title IV; and

16 (D) such other factors determined relevant
17 by the Corporation.

18 **SEC. 402. AUTHORITY TO ENTER ALTERNATIVE FUNDING**
19 **AGREEMENTS TO PREVENT PLAN TERMI-**
20 **NATIONS.**

21 (a) AUTHORITY TO ENTER INTO AGREEMENTS.—

22 (1) DISTRESS TERMINATIONS.—Section 4041(c)
23 of the Employee Retirement Income Security Act of
24 1974 (29 U.S.C. 1341(c)) is amended by adding at
25 the end the following:

1 “(4) ALTERNATIVE FUNDING AGREEMENTS.—

2 “(A) IN GENERAL.—If the corporation de-
3 termines that—

4 “(i) a plan meets the requirements for
5 a distress termination under this sub-
6 section without regard to an alternative
7 funding agreement under section 4047(a),
8 and

9 “(ii) the termination of the plan
10 would not be necessary if such an agree-
11 ment were entered into,

12 the corporation may request that the Secretary
13 of the Treasury, in consultation with the cor-
14 poration, enter into such an agreement with the
15 contributing sponsors under the plan.

16 “(B) EARLY ACTION INITIATIVES.—Sub-
17 ject to the limitations in subsection (a)(3), if—

18 “(i) the corporation determines that it
19 is reasonable to believe that a plan may be
20 subject to a distress termination within 6
21 months unless action is taken, the corpora-
22 tion may request that the Secretary of the
23 Treasury, in consultation with the corpora-
24 tion, enter into an alternative funding
25 agreement under section 4047(a); and

1 “(ii) the corporation, upon the request
2 of the contributing sponsor of a plan or
3 other person, determines that it is reason-
4 able to believe that a plan may be subject
5 to a distress termination within 2 years
6 unless action is taken, the corporation may
7 request that the Secretary of the Treasury,
8 in consultation with the corporation, enter
9 into an alternative funding agreement
10 under section 4047(a).”.

11 (2) INVOLUNTARY TERMINATIONS.—Section
12 4042 of the Employee Retirement Income Security
13 Act of 1974 (29 U.S.C. 1342) is amended by adding
14 at the end the following:

15 “(i) ALTERNATIVE FUNDING AGREEMENTS.—If—

16 “(1) the corporation determines that it is rea-
17 sonable to believe that a plan will meet the require-
18 ments for an involuntary termination under this sec-
19 tion without regard to an alternative funding agree-
20 ment under section 4047(a) within 6 months unless
21 action is taken, or

22 “(B) the corporation, upon the request of the
23 contributing sponsor of a plan or other person, de-
24 termines that it is reasonable to believe that a plan

1 may be subject to an involuntary termination within
2 2 years unless action is taken,
3 and such a termination would not be necessary if such
4 an agreement is entered into, the corporation may request
5 that the Secretary of the Treasury, in consultation with
6 the corporation, enter into an alternative funding agree-
7 ment under section 4047(a).”.

8 (b) ALTERNATIVE FUNDING SCHEDULES TO PRE-
9 VENT PLAN TERMINATION.—

10 (1) IN GENERAL.—Section 4047 of the Em-
11 ployee Retirement Income Security Act of 1974 (29
12 U.S.C. 1347) is amended by—

13 (A) striking the section heading and all
14 that follows though “Whenever” and
15 inserting—

16 **“SEC. 4047. ALTERNATIVE FUNDING SCHEDULES TO PRE-**
17 **VENT TERMINATION; RESTORATION OF TER-**
18 **MINATED PLANS.**

19 “(a) ALTERNATIVE FUNDING AGREEMENTS.—

20 “(1) IN GENERAL.—If the requirements of sec-
21 tion 4041(c)(4) or 4042(i) are met with respect to
22 any plan, the Secretary of the Treasury, in consulta-
23 tion with the corporation, may enter into an alter-
24 native funding agreement with the contributing

1 sponsors under the plan that meets the requirements
2 of this subsection.

3 “(2) OTHER REQUIREMENTS.—An alternative
4 funding agreement may be entered into by the Sec-
5 retary of the Treasury, in consultation with corpora-
6 tion, only if—

7 “(A) such Secretary finds the agreement to
8 be in the best interests of the participants and
9 beneficiaries; and

10 “(B) the agreement meets the require-
11 ments set forth by such Secretary in regula-
12 tions.

13 “(3) ALTERNATIVE FUNDING AGREEMENT.—

14 “(A) IN GENERAL.—An agreement meets
15 the requirements of this subsection if the
16 agreement—

17 “(i) provides for an additional amorti-
18 zation schedule for a period not to exceed
19 10 years;

20 “(ii) requires the plan to pay at the
21 time the agreement is entered into any
22 professional fees or other expenses in-
23 curred by the Secretary of the Treasury or
24 the corporation in connection with the
25 agreements,

1 “(iii) requires approval by the cor-
2 poration before the contributing sponsor
3 establishes or maintains any other defined
4 benefit plan other than any multiemployer
5 plan that covers a substantial number of
6 employees who are covered by the plan
7 subject to the agreement or who perform
8 substantially the same type of work with
9 respect to the same business operations as
10 employees covered by such plan, and

11 “(iv) provides for a termination date,
12 or a schedule of termination dates, for the
13 purpose of the guarantee under section
14 4022, to apply if a plan terminates during
15 the period that the agreement is in effect.

16 “(B) OTHER CONDITIONS.—Notwith-
17 standing any other provision of this Act, an
18 agreement meeting the requirements of this
19 subsection may provide—

20 “(i) for restrictions on, or the elimi-
21 nation of, future accruals, but only to the
22 extent that such restrictions or elimi-
23 nations would have been permitted under
24 section 204(g) or section 411(d)(6) of the
25 Internal Revenue Code of 1986 if they had

1 the terms of the agreement and its ef-
2 fect on such parties, and

3 “(II) each employee organization
4 representing participants in the plan
5 approves the agreement before it
6 takes effect.

7 “(ii) FORM AND MANNER OF NO-
8 TICE.—The notice under clause (i) shall be
9 written in a manner calculated to be un-
10 derstood by the average plan participant
11 and may be provided to a person des-
12 ignated, in writing, by the person to which
13 it would otherwise be provided. Such notice
14 may be provided in written, electronic, or
15 other appropriate form to the extent such
16 form is reasonably accessible to persons to
17 whom the notice is required to be provided.

18 “(4) COORDINATION WITH MINIMUM FUNDING
19 REQUIREMENTS.—Any alternative funding schedule
20 under an agreement meeting the requirements under
21 this subsection shall supersede the minimum funding
22 requirements of this Act and the Internal Revenue
23 Code of 1986. For purposes of applying this Act or
24 such Code, any contribution required under such
25 schedule shall be treated in the same manner as con-

1 tributions required under section 302 of this Act
2 and section 412 of such Code.

3 “(b) RESTORATION OF TERMINATED PLANS.—
4 Whenever”.

5 (2) CONFORMING AMENDMENT.—The table of
6 contents for title IV of such Act is amended by
7 striking the item relating to section 4047 and insert-
8 ing the following:

“4047. Alternative funding schedules to prevent terminations; restoration of
terminated plans.”.

9 (c) AMENDMENTS TO OTHER PROVISIONS.—

10 (1) QUALIFICATION REQUIREMENT.—Section
11 401(a) of the Internal Revenue Code of 1986, as
12 amended by sections 115 and 701 of this Act, is
13 amended by inserting after paragraph (35) the fol-
14 lowing new paragraph:

15 “(36) SUCCESSOR PLANS TO CERTAIN PLANS.—
16 If—

17 “(A) an alternative funding agreement de-
18 scribed in section 4047(a) of the Employee Re-
19 tirement Income Security Act of 1974 is in ef-
20 fect with respect to any plan, and

21 “(B) the plan is maintained by an em-
22 ployer that establishes or maintains 1 or more
23 other defined benefit plans (other than any
24 multiemployer plan), and such other plans in

1 combination provide benefit accruals to any
2 substantial number of successor employees,
3 the Secretary may, in the Secretary's discretion, de-
4 termine that any trust of which any other such plan
5 is a part does not constitute a qualified trust under
6 this subsection unless all benefit obligations of the
7 plan to which the alternative funding agreement ap-
8 plies have been satisfied. For purposes of this para-
9 graph, the term 'successor employee' means any em-
10 ployee who is or was covered by the plan to which
11 the alternative funding agreement applies and any
12 employee who performs substantially the same type
13 of work with respect to the same business operations
14 as an employee covered by such plan."

15 (2) LIMITATION ON DEDUCTIONS UNDER CER-
16 TAIN PLANS.—Section 404(a)(7)(C) of the Internal
17 Revenue Code of 1986 is amended by adding at the
18 end the following:

19 "(iii) PLANS SUBJECT TO ALTER-
20 NATIVE FUNDING AGREEMENTS.—This
21 paragraph shall not apply to any plan for
22 a plan year if an alternative funding agree-
23 ment described in section 4047(a) of the
24 Employee Retirement Income Security Act
25 of 1974 is in effect for such year."

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of enactment of
3 this Act.

4 **SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAIN-**
5 **TAINED BY COMMERCIAL AIRLINES THAT**
6 **ARE AMENDED TO CEASE FUTURE BENEFIT**
7 **ACCRUALS.**

8 (a) IN GENERAL.—If an election is made to have this
9 section apply to an eligible plan—

10 (1) in the case of any applicable plan year be-
11 ginning before January 1, 2007, the plan shall not
12 have an accumulated funding deficiency for purposes
13 of section 302 of the Employee Retirement Income
14 Security Act of 1974 and sections 412 and 4971 of
15 the Internal Revenue Code of 1986 if contributions
16 to the plan for the plan year are not less than the
17 minimum required contribution determined under
18 subsection (d) for the plan for the plan year, and

19 (2) in the case of any applicable plan year be-
20 ginning on or after January 1, 2007, the minimum
21 required contribution determined under sections 303
22 of such Act and 430 of such Code shall, for purposes
23 of sections 302 and 303 of such Act and sections
24 412, 430, and 4971 of such Code, be equal to the

1 minimum required contribution determined under
2 subsection (d) for the plan for the plan year.

3 (b) ELIGIBLE PLAN.—For purposes of this section—

4 (1) IN GENERAL.—The term “eligible plan”
5 means a defined benefit plan (other than a multiem-
6 ployer plan) to which sections 302 of such Act and
7 412 of such Code applies—

8 (A) which is sponsored by an employer
9 which is a commercial passenger airline, and

10 (B) with respect to which the requirements
11 of paragraphs (2) and (3) are met.

12 (2) ACCRUAL RESTRICTIONS.—The require-
13 ments of this paragraph are met if, effective as of
14 the first day of the first applicable plan year and at
15 all times thereafter, the plan provides that—

16 (A) the accrued benefit, any death or dis-
17 ability benefit, and any social security supple-
18 ment described in the last sentence of section
19 411(a)(9) of such Code and section
20 204(b)(1)(G) of such Act, of each participant
21 are frozen at the amount of such benefit or
22 supplement immediately before such first day,
23 and

24 (B) all other benefits under the plan are
25 eliminated,

1 but only to the extent the freezing or elimination of
2 such benefits would have been permitted under sec-
3 tion 411(d)(6) of such Code and section 204(g) of
4 such Act if they had been implemented by a plan
5 amendment adopted immediately before such first
6 day.

7 (3) RESTRICTION ON APPLICABLE BENEFIT IN-
8 CREASES.—The requirements of this paragraph are
9 met if no applicable benefit increase (as defined in
10 section 436(b)(3) of such Code and section
11 305(b)(3) of such Act, but determined without re-
12 gard to subparagraph (B) or (C) thereof) takes ef-
13 fect at any time during the period beginning on July
14 26, 2005, and ending on the day before the first day
15 of the first applicable plan year.

16 (c) ELECTIONS AND RELATED TERMS.—

17 (1) IN GENERAL.—A plan sponsor shall make
18 the election under subsection (a) at such time and
19 in such manner as the Secretary of the Treasury
20 may prescribe. Such election, once made, may be re-
21 voked only with the consent of such Secretary.

22 (2) YEARS FOR WHICH ELECTION MADE.—

23 (A) IN GENERAL.—The plan sponsor may
24 select the first plan year to which the election
25 under subsection (a) applies from among plan

1 years ending after the date of the election. The
2 election shall apply to such plan year and all
3 subsequent years.

4 (B) ELECTION OF NEW PLAN YEAR.—The
5 plan sponsor may specify a new plan year in the
6 election under subsection (a) and the plan year
7 of the plan may be changed to such new plan
8 year without the approval of the Secretary of
9 the Treasury.

10 (3) APPLICABLE PLAN YEAR.—The term “ap-
11 plicable plan year” means each plan year to which
12 the election under subsection (a) applies under para-
13 graph (1).

14 (d) MINIMUM REQUIRED CONTRIBUTION.—

15 (1) IN GENERAL.—In the case of any applicable
16 plan year during the amortization period, the min-
17 imum required contribution shall be the amount nec-
18 essary to amortize the unfunded liability of the plan,
19 determined as of the first day of the plan year, in
20 equal annual installments (until fully amortized)
21 over the remainder of the amortization period. Such
22 amount shall be separately determined for each ap-
23 plicable plan year.

24 (2) YEARS AFTER AMORTIZATION PERIOD.—In
25 the case of any plan year beginning after the end of

1 the amortization period, section 302(a)(2)(A) of
2 such Act and section 412(a)(2)(A) of such Code
3 shall apply to such plan, but the prefunding balance
4 as of the first day of the first of such years under
5 section 303(f) of such Act and section 430(f) of such
6 Code shall be zero.

7 (3) DEFINITIONS.—For purposes of this
8 section—

9 (A) UNFUNDED LIABILITY.—The term
10 “unfunded liability” means the unfunded ac-
11 crued liability under the plan, determined under
12 the unit credit funding method.

13 (B) AMORTIZATION PERIOD.—The term
14 “amortization period” means the 14-plan year
15 period beginning with the first applicable plan
16 year.

17 (4) OTHER RULES.—In determining the min-
18 imum required contribution and amortization
19 amount under this subsection—

20 (A) the provisions of section 302(e)(3) of
21 such Act and section 412(e)(3) of such Code, as
22 in effect before the date of enactment of this
23 section, shall apply,

24 (B) the rate of interest under section
25 302(b) of such Act and section 412(b) of such

1 Code, as so in effect, shall be used for all cal-
2 culations requiring an interest rate, and

3 (C) the value of plan assets shall be equal
4 to their fair market value.

5 (e) FUNDING STANDARD ACCOUNT AND
6 PREFUNDING BALANCE.—Any charge or credit in the
7 funding standard account under section 302 of such Act
8 or section 412 of such Code, and any prefunding balance
9 under section 303 of such Act or section 430 of such Code,
10 as of the day before the first day of the first applicable
11 plan year, shall be reduced to zero.

12 (f) AMENDMENTS TO OTHER PROVISIONS.—

13 (1) QUALIFICATION REQUIREMENT.—Section
14 401(a)(35) of the Internal Revenue Code of 1986, as
15 added by this Act, is amended by adding at the end
16 the following: “This paragraph shall also apply to
17 any plan during any period during which an amorti-
18 zation schedule under section 403 of the Pension Se-
19 curity and Transparency Act of 2005 is in effect.”

20 (2) PBGC LIABILITY LIMITED.—Section 4022
21 of the Employee Retirement Income Security Act of
22 1974, as amended by this Act, is amended by adding
23 at the end the following new subsection:

24 “(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN
25 FUNDING REQUIREMENTS.—If any plan makes an elec-

1 tion under section 403 of the Pension Security and Trans-
2 parency Act of 2005, then this section and section
3 4044(a)(3) shall be applied by treating the first day of
4 the first applicable plan year as the termination date of
5 the plan.”.

6 (3) LIMITATION ON DEDUCTIONS UNDER CER-
7 TAIN PLANS.—Section 404(a)(7)(C)(iii) of the Inter-
8 nal Revenue Code of 1986, as added by this Act, is
9 amended by adding at the end the following new
10 sentence: “This clause shall also apply to any plan
11 for a plan year if an election under section 403 of
12 the Pension Security and Transparency Act of 2005
13 is in effect for such year.”

14 (4) NOTICE.—In the case of a plan amendment
15 adopted in order to comply with this section, any no-
16 tice required under section 204(h) of such Act or
17 section 4980F(e) of such Code shall be provided
18 within 15 days of the effective date of such plan
19 amendment. This subsection shall not apply to any
20 plan unless such plan is maintained pursuant to one
21 or more collective bargaining agreements between
22 employee representatives and 1 or more employers.

23 (g) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to plan years ending after the date
25 of the enactment of this Act.

1 **SEC. 404. LIMITATION ON PBGC GUARANTEE OF SHUT-**
2 **DOWN AND OTHER BENEFITS.**

3 (a) IN GENERAL.—Section 4022(b) of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1322(b)) is amended by adding at the end the following:

6 “(8) If a benefit is payable by reason of—

7 “(A) a plant shutdown or similar event; or

8 “(B) any event other than attainment of
9 any age, performance of any service, receipt or
10 derivation of any compensation, or the occur-
11 rence of death or disability,

12 this section shall be applied as if a plan amendment
13 had been adopted on the date such event occurred
14 that provides for the payment of such benefit.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to benefits that become payable
17 as a result of a plant shutdown or other similar event,
18 as such terms are used in the amendment made by sub-
19 section (a), that occurs after July 26, 2005.

20 **SEC. 405. RULES RELATING TO BANKRUPTCY OF EM-**
21 **PLOYER.**

22 (a) GUARANTEE.—Section 4022 of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C. 1322),
24 as amended by this Act, is amended by adding at the end
25 the following:

1 “(i) BANKRUPTCY FILING SUBSTITUTED FOR TER-
2 MINATION DATE.—If a contributing sponsor of a plan has
3 filed or has had filed against such person a petition seek-
4 ing liquidation or reorganization in a case under title 11,
5 United States Code, or under any similar Federal law or
6 law of a State or political subdivision, and the case has
7 not been dismissed as of the termination date, then this
8 section shall be applied by treating the date such petition
9 was filed as the termination date of the plan.”.

10 (b) ALLOCATION OF ASSETS AMONG PRIORITY
11 GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044
12 of the Employee Retirement Income Security Act of 1974
13 (29 U.S.C. 1344) is amended by adding at the end the
14 following:

15 “(e) BANKRUPTCY FILING SUBSTITUTED FOR TER-
16 MINATION DATE.—If a contributing sponsor of a plan has
17 filed or has had filed against such person a petition seek-
18 ing liquidation or reorganization in a case under title 11,
19 United States Code, or under any similar Federal law or
20 law of a State or political subdivision, and the case has
21 not been dismissed as of the termination date, then sub-
22 section (a)(3) shall be applied by treating the date such
23 petition was filed as the termination date of the plan.”.

24 (c) EFFECTIVE DATE.—The amendments made this
25 section shall apply with respect to proceedings initiated

1 under title 11, United States Code, or under any similar
2 Federal law or law of a State or political subdivision, on
3 or after the date that is 30 days after the date of enact-
4 ment of this Act.

5 **SEC. 406. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**
6 **PLOYERS.**

7 (a) IN GENERAL.—Subparagraph (A) of section
8 4006(a)(3) of the Employee Retirement Income Security
9 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

10 (1) in clause (i), by inserting “other than a new
11 single-employer plan (as defined in subparagraph
12 (F)) maintained by a small employer (as so de-
13 fined),” after “single-employer plan,”

14 (2) in clause (iii), by striking the period at the
15 end and inserting “, and”, and

16 (3) by adding at the end the following new
17 clause:

18 “(v) in the case of a new single-employer plan
19 (as defined in subparagraph (F)) maintained by a
20 small employer (as so defined) for the plan year, \$5
21 for each individual who is a participant in such plan
22 during the plan year.”

23 (b) DEFINITION OF NEW SINGLE-EMPLOYER
24 PLAN.—Section 4006(a)(3) of the Employee Retirement
25 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is

1 amended by adding at the end the following new subpara-
2 graph:

3 “(F)(i) For purposes of this paragraph, a single-em-
4 ployer plan maintained by a contributing sponsor shall be
5 treated as a new single-employer plan for each of its first
6 5 plan years if, during the 36-month period ending on the
7 date of the adoption of such plan, the sponsor or any
8 member of such sponsor’s controlled group (or any prede-
9 cessor of either) did not establish or maintain a plan to
10 which this title applies with respect to which benefits were
11 accrued for substantially the same employees as are in the
12 new single-employer plan.

13 “(ii)(I) For purposes of this paragraph, the term
14 ‘small employer’ means an employer which on the first day
15 of any plan year has, in aggregation with all members of
16 the controlled group of such employer, 100 or fewer em-
17 ployees.

18 “(II) In the case of a plan maintained by two or more
19 contributing sponsors that are not part of the same con-
20 trolled group, the employees of all contributing sponsors
21 and controlled groups of such sponsors shall be aggregated
22 for purposes of determining whether any contributing
23 sponsor is a small employer.”

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plans first effective after Decem-
3 ber 31, 2005.

4 **SEC. 407. PBGC PREMIUMS FOR SMALL AND NEW PLANS.**

5 (a) NEW PLANS.—Subparagraph (E) of section
6 4006(a)(3) of the Employee Retirement Income Security
7 Act of 1974 (29 U.S.C. 1306(a)(3)), as amended by this
8 Act, is amended by adding at the end the following new
9 clause:

10 “(iv) In the case of a new defined benefit plan, the
11 amount determined under clause (ii) for any plan year
12 shall be an amount equal to the product of the amount
13 determined under clause (ii) and the applicable percent-
14 age. For purposes of this clause, the term ‘applicable per-
15 centage’ means—

16 “(I) 0 percent, for the first plan year.

17 “(II) 20 percent, for the second plan year.

18 “(III) 40 percent, for the third plan year.

19 “(IV) 60 percent, for the fourth plan year.

20 “(V) 80 percent, for the fifth plan year.

21 For purposes of this clause, a defined benefit plan (as de-
22 fined in section 3(35)) maintained by a contributing spon-
23 sor shall be treated as a new defined benefit plan for each
24 of its first 5 plan years if, during the 36-month period
25 ending on the date of the adoption of the plan, the sponsor

1 and each member of any controlled group including the
2 sponsor (or any predecessor of either) did not establish
3 or maintain a plan to which this title applies with respect
4 to which benefits were accrued for substantially the same
5 employees as are in the new plan.”

6 (b) SMALL PLANS.—Paragraph (3) of section
7 4006(a) of the Employee Retirement Income Security Act
8 of 1974 (29 U.S.C. 1306(a)), is amended—

9 (1) by striking “The” in subparagraph (E)(i)
10 and inserting “Except as provided in subparagraph
11 (G), the”, and

12 (2) by inserting after subparagraph (F) the fol-
13 lowing new subparagraph:

14 “(G)(i) In the case of an employer who has 25 or
15 fewer employees on the first day of the plan year, the addi-
16 tional premium determined under subparagraph (E) for
17 each participant shall not exceed \$5 multiplied by the
18 number of participants in the plan as of the close of the
19 preceding plan year.

20 “(ii) For purposes of clause (i), whether an employer
21 has 25 or fewer employees on the first day of the plan
22 year is determined by taking into consideration all of the
23 employees of all members of the contributing sponsor’s
24 controlled group. In the case of a plan maintained by two
25 or more contributing sponsors, the employees of all con-

1 tributing sponsors and their controlled groups shall be ag-
2 gregated for purposes of determining whether the 25-or-
3 fewer-employees limitation has been satisfied.”

4 (c) EFFECTIVE DATES.—

5 (1) SUBSECTION (a).—The amendments made
6 by subsection (a) shall apply to plans first effective
7 after December 31, 2005.

8 (2) SUBSECTION (b).—The amendments made
9 by subsection (b) shall apply to plan years beginning
10 after December 31, 2005.

11 **SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
12 **PREMIUM OVERPAYMENT REFUNDS.**

13 (a) IN GENERAL.—Section 4007(b) of the Employ-
14 ment Retirement Income Security Act of 1974 (29 U.S.C.
15 1307(b)) is amended—

16 (1) by striking “(b)” and inserting “(b)(1)”,
17 and

18 (2) by inserting at the end the following new
19 paragraph:

20 “(2) The corporation is authorized to pay, subject to
21 regulations prescribed by the corporation, interest on the
22 amount of any overpayment of premium refunded to a des-
23 ignated payor. Interest under this paragraph shall be cal-
24 culated at the same rate and in the same manner as inter-
25 est is calculated for underpayments under paragraph (1).”

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to interest accruing for periods
3 beginning not earlier than the date of the enactment of
4 this Act.

5 **SEC. 409. RULES FOR SUBSTANTIAL OWNER BENEFITS IN**
6 **TERMINATED PLANS.**

7 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
8 Section 4022(b)(5) of the Employee Retirement Income
9 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
10 to read as follows:

11 “(5)(A) For purposes of this paragraph, the term
12 ‘majority owner’ means an individual who, at any time
13 during the 60-month period ending on the date the deter-
14 mination is being made—

15 “(i) owns the entire interest in an unincor-
16 porated trade or business,

17 “(ii) in the case of a partnership, is a partner
18 who owns, directly or indirectly, 50 percent or more
19 of either the capital interest or the profits interest
20 in such partnership, or

21 “(iii) in the case of a corporation, owns, directly
22 or indirectly, 50 percent or more in value of either
23 the voting stock of that corporation or all the stock
24 of that corporation.

1 For purposes of clause (iii), the constructive ownership
2 rules of section 1563(e) of the Internal Revenue Code of
3 1986 (other than paragraph (3)(C) thereof) shall apply,
4 including the application of such rules under section
5 414(e) of such Code.

6 “(B) In the case of a participant who is a majority
7 owner, the amount of benefits guaranteed under this sec-
8 tion shall equal the product of—

9 “(i) a fraction (not to exceed 1) the numerator
10 of which is the number of years from the later of the
11 effective date or the adoption date of the plan to the
12 termination date, and the denominator of which is
13 10, and

14 “(ii) the amount of benefits that would be guar-
15 anteed under this section if the participant were not
16 a majority owner.”

17 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

18 (1) Section 4044(a)(4)(B) of the Employee Re-
19 tirement Income Security Act of 1974 (29 U.S.C.
20 1344(a)(4)(B)) is amended by striking “section
21 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

22 (2) Section 4044(b) of such Act (29 U.S.C.
23 1344(b)) is amended—

24 (A) by striking “(5)” in paragraph (2) and
25 inserting “(4), (5),” and

1 (B) by adding at the end the following new
2 subsection:

3 “(d) For purposes of subsection (b)(9), the term ‘sub-
4 stantial owner’ means an individual who, at any time dur-
5 ing the 60-month period ending on the date the determina-
6 tion is being made—

7 “(1) owns the entire interest in an unincor-
8 porated trade or business,

9 “(2) in the case of a partnership, is a partner
10 who owns, directly or indirectly, more than 10 per-
11 cent of either the capital interest or the profits inter-
12 est in such partnership, or

13 “(3) in the case of a corporation, owns, directly
14 or indirectly, more than 10 percent in value of either
15 the voting stock of that corporation or all the stock
16 of that corporation.

17 For purposes of paragraph (3), the constructive ownership
18 rules of section 1563(e) of the Internal Revenue Code of
19 1986 (other than paragraph (3)(C) thereof) shall apply,
20 including the application of such rules under section
21 414(e) of such Code.”

22 (2) Section 4043(c)(7) of such Act (29 U.S.C.
23 1343(e)(7)) is amended by striking “section
24 4022(b)(6)” and inserting “section 4021(d)”.

25 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to plan terminations—

4 (A) under section 4041(c) of the Employee
5 Retirement Income Security Act of 1974 (29
6 U.S.C. 1341(c)) with respect to which notices
7 of intent to terminate are provided under sec-
8 tion 4041(a)(2) of such Act (29 U.S.C.
9 1341(a)(2)) after December 31, 2005, and

10 (B) under section 4042 of such Act (29
11 U.S.C. 1342) with respect to which proceedings
12 are instituted by the corporation after such
13 date.

14 (2) CONFORMING AMENDMENTS.—The amend-
15 ments made by subsection (c) shall take effect on
16 January 1, 2006.

17 **SEC. 410. ACCELERATION OF PBGC COMPUTATION OF BEN-**
18 **EFITS ATTRIBUTABLE TO RECOVERIES FROM**
19 **EMPLOYERS.**

20 (a) MODIFICATION OF AVERAGE RECOVERY PER-
21 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-
22 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS
23 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the
24 Employee Retirement Income Security Act of 1974 (29
25 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

1 tion with plan terminations described
2 under subparagraph (B), bears to

3 “(ii) the sum of all unfunded benefit
4 liabilities under such plans as of the termi-
5 nation date in connection with any such
6 prior termination.”.

7 (2) ALLOCATION OF ASSETS.—Section 4044 of
8 the Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1362) is amended by adding at the
10 end the following new subsection:

11 “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR
12 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
13 PARTICIPANTS AND BENEFICIARIES.—

14 “(1) IN GENERAL.—In the case of a terminated
15 plan, the value of the recovery of liability under sec-
16 tion 4062(c) allocable as a plan asset under this sec-
17 tion for purposes of determining the amount of ben-
18 efits payable by the corporation shall be determined
19 by multiplying—

20 “(A) the amount of liability under section
21 4062(c) as of the termination date of the plan,
22 by

23 “(B) the applicable section 4062(c) recov-
24 ery ratio.

1 “(2) SECTION 4062(c) RECOVERY RATIO.—For
2 purposes of this subsection—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (C), the term ‘section 4062(c) re-
5 covery ratio’ means the ratio which—

6 “(i) the sum of the values of all recov-
7 eries under section 4062(c) determined by
8 the corporation in connection with plan
9 terminations described under subparagraph
10 (B), bears to

11 “(ii) the sum of all the amounts of li-
12 ability under section 4062(c) with respect
13 to such plans as of the termination date in
14 connection with any such prior termi-
15 nation.

16 “(B) PRIOR TERMINATIONS.—A plan ter-
17 mination described in this subparagraph is a
18 termination with respect to which—

19 “(i) the value of recoveries under sec-
20 tion 4062(c) have been determined by the
21 corporation, and

22 “(ii) notices of intent to terminate
23 were provided (or in the case of a termi-
24 nation by the corporation, a notice of de-
25 termination under section 4042 was

1 issued) during the 5-Federal fiscal year pe-
2 riod ending with the third fiscal year pre-
3 ceding the fiscal year in which occurs the
4 date of the notice of intent to terminate
5 (or the notice of determination under sec-
6 tion 4042) with respect to the plan termi-
7 nation for which the recovery ratio is being
8 determined.

9 “(C) EXCEPTION.—In the case of a termi-
10 nated plan with respect to which the out-
11 standing amount of benefit liabilities exceeds
12 \$20,000,000, the term ‘section 4062(c) recovery
13 ratio’ means, with respect to the termination of
14 such plan, the ratio of—

15 “(i) the value of the recoveries on be-
16 half of the plan under section 4062(c), to

17 “(ii) the amount of the liability owed
18 under section 4062(c) as of the date of
19 plan termination to the trustee appointed
20 under section 4042 (b) or (c).

21 “(3) SUBSECTION NOT TO APPLY.—This sub-
22 section shall not apply with respect to the deter-
23 mination of—

24 “(A) whether the amount of outstanding
25 benefit liabilities exceeds \$20,000,000, or

1 “(5) SPECIAL RULE FOR CERTAIN PLANS
2 WHERE CESSATION OR CHANGE IN MEMBERSHIP OF
3 A CONTROLLED GROUP.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), if—

6 “(i) there is transaction or series of
7 transactions which result in a single-em-
8 ployer plan which is a defined benefit plan
9 being maintained by an employer which is
10 not a member of the same controlled group
11 of which the employer maintaining the
12 plan before such transaction or series of
13 transactions was a member,

14 “(ii) the corporation treats the trans-
15 action or series of transactions as resulting
16 in a standard termination to which this
17 subsection applies, and

18 “(iii) the plan is fully funded,
19 then the interest rate used in determining
20 whether the plan is sufficient for benefit liabil-
21 ities for purposes of this subsection shall be the
22 interest rate used in determining whether the
23 plan is fully funded.

1 “(B) LIMITATIONS.—Subparagraph (A)
2 shall not apply to any transaction or series of
3 transactions unless—

4 “(i) any employer maintaining the
5 plan immediately before or after such
6 transaction or series of transactions—

7 “(I) has an outstanding senior
8 unsecured debt instrument which is
9 rated investment grade by each of the
10 nationally recognized statistical rating
11 organizations for corporate bonds that
12 has issued a credit rating for such in-
13 strument, or

14 “(II) if no such debt instrument
15 of such employer has been rated by
16 such an organization but 1 or more of
17 such organizations has made an issuer
18 credit rating for such employer, all
19 such organizations which have so
20 rated the employer have rated such
21 employer investment grade, and

22 “(ii) the employer maintaining the
23 plan after the transaction or series of
24 transactions employs at least 30 percent of
25 the employees located in the United States

1 who were employed by such employer im-
2 mediately before the transaction or series
3 of transactions.

4 “(C) FULLY FUNDED.—For purposes of
5 subparagraph (A), a plan shall be treated as
6 fully funded with respect to any transaction or
7 series of transactions if—

8 “(i) in the case of a transaction or se-
9 ries of transactions which occur in a plan
10 year beginning before January 1, 2007,
11 the funded current liability percentage de-
12 termined under section 302(d) for the plan
13 year is at least 100 percent, and

14 “(ii) in the case of a transaction or
15 series of transactions which occur in a plan
16 year beginning on or after such date, the
17 funding target attainment percentage de-
18 termined under section 303 is, as of the
19 valuation date for such plan year, at least
20 100 percent.”

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to any transaction or series of
23 transactions occurring on and after the date of the enact-
24 ment of this Act.

1 **SEC. 412. EFFECT OF TITLE.**

2 The decreases in Federal outlays resulting from the
3 enactment of this title, and the amendments made by this
4 title, shall be treated as in lieu of the decreases in Federal
5 outlays which—

6 (1) resulted from amendments made to title IV
7 of the Employee Retirement Income Security Act of
8 1974 (29 U.S.C. 1301 et seq.); and

9 (2) were contained in an Act enacted pursuant
10 to the concurrent resolution on the budget for fiscal
11 year 2006.

12 **TITLE V—DISCLOSURE**

13 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.**

14 (a) IN GENERAL.—Section 101(f) of the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C.
16 1021(f)) is amended to read as follows:

17 “(f) DEFINED BENEFIT PLAN FUNDING NOTICES.—

18 “(1) IN GENERAL.—The administrator of a de-
19 fined benefit plan shall for each plan year provide a
20 plan funding notice to the Pension Benefit Guaranty
21 Corporation, to each plan participant and bene-
22 ficiary, to each labor organization representing such
23 participants or beneficiaries, and, in the case of a
24 multiemployer plan, to each employer that has an
25 obligation to contribute to the plan.

26 “(2) INFORMATION CONTAINED IN NOTICES.—

1 “(A) IDENTIFYING INFORMATION.—Each
2 notice required under paragraph (1) shall con-
3 tain identifying information, including the name
4 of the plan, the address and phone number of
5 the plan administrator and the plan’s principal
6 administrative officer, each plan sponsor’s em-
7 ployer identification number, and the plan num-
8 ber of the plan.

9 “(B) SPECIFIC INFORMATION.—A plan
10 funding notice under paragraph (1) shall
11 include—

12 “(i)(I) in the case of a single-employer
13 plan, a statement as to whether the plan’s
14 funding target attainment percentage (as
15 defined in section 303(d)(2)) for the plan
16 year to which the notice relates, and for
17 the 2 preceding plan years, is at least 100
18 percent (and, if not, the actual percent-
19 ages), or

20 “(II) in the case of a multiemployer
21 plan, a statement as to whether the plan’s
22 funded percentage (as defined in section
23 305(i)) for the plan year to which the no-
24 tice relates, and for the 2 preceding plan

1 years, is at least 100 percent (and, if not,
2 the actual percentages),

3 “(ii)(I) in the case of a single-em-
4 ployer plan, a statement of the value of the
5 plan’s assets and liabilities for the plan
6 year to which the notice relates as of the
7 last day of the plan year to which the no-
8 tice relates determined using the asset
9 valuation under subclause (I) of section
10 4006(a)(3)(E)(iii) and the interest rate
11 under subclause (II) of such section, and

12 “(II) in the case of a multiemployer
13 plan, a statement of the value of the plan’s
14 assets and liabilities for the plan year to
15 which the notice relates as the last day of
16 such plan year,

17 “(iii) a statement of the number of
18 participants who are—

19 “(I) retired or separated from
20 service and are receiving benefits;

21 “(II) retired or separated partici-
22 pants entitled to future benefits, and

23 “(II) active participants under
24 the plan,

1 “(iv) a statement setting forth the
2 funding policy of the plan and the asset al-
3 location of investments under the plan (ex-
4 pressed as percentages of total assets) as
5 of the end of the plan year to which the
6 notice relates,

7 “(v) in the case of a multiemployer
8 plan, whether the plan was in critical or
9 endangered status under section 305 for
10 such plan year and, if so—

11 “(I) a list of the actions taken by
12 the plan to improve its funding status,
13 and

14 “(II) a statement describing how
15 a person may obtain a copy of the
16 plan’s improvement or rehabilitation
17 plan, as appropriate, adopted under
18 section 305 and the actuarial and fi-
19 nancial data that demonstrate any ac-
20 tion taken by the plan toward fiscal
21 improvement,

22 “(vi) a summary of any funding im-
23 provement plan, rehabilitation plan, or
24 modification thereof adopted under section

1 305 during the plan year to which the no-
2 tice relates,

3 “(vii) in the case of any plan amend-
4 ments, scheduled benefit increase or reduc-
5 tion, or other known event taking effect in
6 the current plan year and having a mate-
7 rial effect on plan liabilities or assets for
8 the year (as defined in regulations by the
9 Secretary), an explanation of the amend-
10 ment, schedule increase or reduction, or
11 event, and a projection to the end of such
12 plan year of the effect of the amendment,
13 scheduled increase or reduction, or event
14 on plan liabilities,

15 “(viii)(I) in the case of a single-em-
16 ployer plan, a summary of the rules gov-
17 erning termination of single-employer plans
18 under subtitle C of title IV, or

19 “(II) in the case of a multiemployer
20 plan, a summary of the rules governing re-
21 organization or insolvency, including the
22 limitations on benefit payments and any
23 potential benefit reductions and suspen-
24 sions (and the potential effects of such lim-

1 itations, reductions, and suspensions on
2 the plan), and

3 “(ix) a general description of the ben-
4 efits under the plan which are eligible to be
5 guaranteed by the Pension Benefit Guar-
6 anty Corporation, along with an expla-
7 nation of the limitations on the guarantee
8 and the circumstances under which such
9 limitations apply.

10 “(C) OTHER INFORMATION.—Each notice
11 under paragraph (1) shall include—

12 “(i) in the case of a multiemployer
13 plan, a statement that the plan adminis-
14 trator shall provide, upon written request,
15 to any labor organization representing plan
16 participants and beneficiaries and any em-
17 ployer that has an obligation to contribute
18 to the plan, a copy of the annual report
19 filed with the Secretary under section
20 104(a), and

21 “(ii) any additional information which
22 the plan administrator elects to include to
23 the extent not inconsistent with regulations
24 prescribed by the Secretary.

25 “(3) TIME FOR PROVIDING NOTICE.—

1 “(A) IN GENERAL.—Any notice under
2 paragraph (1) shall be provided not later than
3 90 days after the end of the plan year to which
4 the notice relates.

5 “(B) EXCEPTION FOR SMALL PLANS.—In
6 the case of a small plan (as such term is used
7 under section 303(g)(2)(B)) any notice under
8 paragraph (1) shall be provided upon filing of
9 the annual report under section 104(a).

10 “(4) FORM AND MANNER.—Any notice under
11 paragraph (1)—

12 “(A) shall be provided in a form and man-
13 ner prescribed in regulations of the Secretary,

14 “(B) shall be written in a manner so as to
15 be understood by the average plan participant,
16 and

17 “(C) may be provided in written, elec-
18 tronic, or other appropriate form to the extent
19 such form is reasonably accessible to persons to
20 whom the notice is required to be provided.”.

21 (b) MODEL NOTICE.—Not later than 180 days after
22 the date of the enactment of this Act, the Secretary of
23 Labor shall publish a model version of the notice required
24 by section 101(f) of the Employee Retirement Income Se-
25 curity Act of 1974. The Secretary of Labor may promul-

1 gate any interim final rules as the Secretary determines
2 appropriate to carry out the provisions of this subsection.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to plan years beginning after De-
5 cember 31, 2005.

6 **SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN IN-**
7 **FORMATION.**

8 (a) FINANCIAL INFORMATION WITH RESPECT TO
9 MULTIEMPLOYER PLANS.—

10 (1) IN GENERAL.—Section 101 of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C.
12 1021) is amended—

13 (A) by redesignating subsection (k) as sub-
14 section (l); and

15 (B) by inserting after subsection (j) the
16 following new subsection:

17 “(k) MULTIEMPLOYER PLAN INFORMATION MADE
18 AVAILABLE ON REQUEST.—

19 “(1) IN GENERAL.—Each administrator of a
20 multiemployer plan shall, upon written request, fur-
21 nish to any plan participant or beneficiary, employee
22 representative, or any employer that has an obliga-
23 tion to contribute to the plan—

24 “(A) a copy of any periodic actuarial re-
25 port (including sensitivity testing) received by

1 the plan for any plan year which has been in
2 the plan's possession for at least 30 days, and

3 “(B)(i) a copy of any quarterly, semi-an-
4 nual, or annual financial report prepared for
5 the plan by any plan investment manager or ad-
6 visor or other fiduciary which has been in the
7 plan's possession for at least 30 days, or

8 “(ii) at the discretion of the person sub-
9 mitting the written request, a copy of a quar-
10 terly summary of the financial reports described
11 clause (i).

12 “(2) COMPLIANCE.—Information required to be
13 provided under paragraph (1) —

14 “(A) shall be provided to the requesting
15 participant, beneficiary, or employer within 30
16 days after the request in a form and manner
17 prescribed in regulations of the Secretary,

18 “(B) may be provided in written, elec-
19 tronic, or other appropriate form to the extent
20 such form is reasonably accessible to persons to
21 whom the information is required to be pro-
22 vided, and

23 “(C) shall not—

24 “(i) include any individually identifi-
25 able information regarding any plan partic-

1 participant, beneficiary, employee, fiduciary, or
2 contributing employer, or

3 “(ii) reveal any proprietary informa-
4 tion regarding the plan, any contributing
5 employer, or entity providing services to
6 the plan.

7 “(3) LIMITATIONS.—In no case shall a partici-
8 pant, beneficiary, or employer be entitled under this
9 subsection to receive more than one copy of any re-
10 port described in paragraph (1) during any one 12-
11 month period. The administrator may make a rea-
12 sonable charge to cover copying, mailing, and other
13 costs of furnishing copies of information pursuant to
14 paragraph (1). The Secretary may by regulations
15 prescribe the maximum amount which will constitute
16 a reasonable charge under the preceding sentence.”.

17 (2) ENFORCEMENT.—Section 502(c)(4) of such
18 Act (29 U.S.C. 1132(c)(4)) is amended by striking
19 “section 101(j)” and inserting “subsection (j) or (k)
20 of section 101”.

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)) not later than 270 days
25 after the date of the enactment of this Act.

1 (b) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY
2 TO MULTIEMPLOYER PLANS.—

3 (1) IN GENERAL.—Section 101 of such Act (as
4 amended by subsection (a)) is amended—

5 (A) by redesignating subsection (l) as sub-
6 section (m); and

7 (B) by inserting after subsection (k) the
8 following new subsection:

9 “(l) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-
10 ITY.—

11 “(1) IN GENERAL.—The plan sponsor or ad-
12 ministrator of a multiemployer plan shall, upon writ-
13 ten request, furnish to any employer who has an ob-
14 ligation to contribute to the plan a notice of—

15 “(A) the estimated amount which would be
16 the amount of such employer’s withdrawal li-
17 ability under part 1 of subtitle E of title IV if
18 such employer withdrew on the last day of the
19 plan year preceding the date of the request, and

20 “(B) an explanation of how such estimated
21 liability amount was determined, including the
22 actuarial assumptions and methods used to de-
23 termine the value of the plan liabilities and as-
24 sets, the data regarding employer contributions,
25 unfunded vested benefits, annual changes in the

1 plan's unfunded vested benefits, and the appli-
2 cation of any relevant limitations on the esti-
3 mated withdrawal liability.

4 For purposes of subparagraph (B), the term 'em-
5 ployer contribution' means, in connection with a par-
6 ticipant, a contribution made by an employer as an
7 employer of such participant.

8 "(2) COMPLIANCE.—Any notice required to be
9 provided under paragraph (1)—

10 "(A) shall be provided to the requesting
11 employer within—

12 "(i) 180 days after the request in a
13 form and manner prescribed in regulations
14 of the Secretary, or

15 "(ii) subject to regulations of the Sec-
16 retary, such longer time as may be nec-
17 essary in the case of a plan that deter-
18 mines withdrawal liability based on any
19 method described under paragraph (4) or
20 (5) of section 4211(c); and

21 "(B) may be provided in written, elec-
22 tronic, or other appropriate form to the extent
23 such form is reasonably accessible to employers
24 to whom the information is required to be pro-
25 vided.

1 “(3) LIMITATIONS.—In no case shall an em-
2 ployer be entitled under this subsection to receive
3 more than one notice described in paragraph (1)
4 during any one 12-month period. The person re-
5 quired to provide such notice may make a reasonable
6 charge to cover copying, mailing, and other costs of
7 furnishing such notice pursuant to paragraph (1).
8 The Secretary may by regulations prescribe the max-
9 imum amount which will constitute a reasonable
10 charge under the preceding sentence.”.

11 (2) ENFORCEMENT.—Section 502(c)(4) of such
12 Act (29 U.S.C. 1132(c)(4)) is amended by striking
13 “section 101(j) or (k)” and inserting “subsection (j),
14 (k), or (l) of section 101”.

15 (c) NOTICE OF AMENDMENT REDUCING FUTURE AC-
16 CRUALS.—Section 204(h)(1) of such Act (29 U.S.C.
17 1054(h)(1)) is amended by inserting at the end before the
18 period “and to each employer who has an obligation to
19 contribute to the plan.”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to plan years beginning after De-
22 cember 31, 2005.

1 **SEC. 503. ADDITIONAL ANNUAL REPORTING REQUIRE-**
2 **MENTS.**

3 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-
4 MENTS WITH RESPECT TO DEFINED BENEFIT PLANS.—

5 (1) IN GENERAL.—Section 103 of the Employee
6 Retirement Income Security Act of 1974 (29 U.S.C.
7 1023) is amended—

8 (A) in subsection (a)(1)(B), by striking
9 “subsections (d) and (e)” and inserting “sub-
10 sections (d), (e), and (f)”; and

11 (B) by adding at the end the following new
12 subsection:

13 “(f) ADDITIONAL INFORMATION WITH RESPECT TO
14 DEFINED BENEFIT PLANS.—

15 “(1) GENERAL INFORMATION.—With respect to
16 any defined benefit plan, an annual report under
17 this section for a plan year shall include the fol-
18 lowing:

19 “(A) In any case in which any liabilities to
20 participants or their beneficiaries under such
21 plan as of the end of such plan year consist (in
22 whole or in part) of liabilities to such partici-
23 pants and beneficiaries under 2 or more pen-
24 sion plans as of immediately before such plan
25 year, the funded percentage of each of such 2
26 or more pension plans as of the last day of such

1 plan year and the funded percentage of the plan
2 with respect to which the annual report is filed
3 as of the last day of such plan year.

4 “(B) For purposes of this paragraph, the
5 term ‘funded percentage’—

6 “(i) in the case of a single-employer
7 plan, means the funding target attainment
8 percentage, as defined in section
9 303(d)(2), and

10 “(ii) in the case of a multiemployer
11 plan, has the meaning given such term in
12 section 305(i)(2).

13 “(2) ADDITIONAL INFORMATION FOR MULTIEM-
14 PLOYER PLANS.—With respect to any defined ben-
15 efit plan which is a multiemployer plan, an annual
16 report under this section for a plan year shall in-
17 clude, in addition to the information required under
18 paragraph (1), the following, as of the end of the
19 plan year to which the notice relates:

20 “(A) The number of employers obligated to
21 contribute to the plan.

22 “(B) A list of the employers that contrib-
23 uted more than 5 percent of the total contribu-
24 tions to the plan during such plan year.

1 “(C) The number of participants under the
2 plan on whose behalf no employer contributions
3 have been made to the plan for such plan year
4 and for each of the 2 preceding plan years. For
5 purposes of this subparagraph, the term ‘em-
6 ployer contribution’ means, in connection with a
7 participant, a contribution made by an em-
8 ployer as an employer of such participant.

9 “(D) The ratio of—

10 “(i) the number of participants under
11 the plan on whose behalf no employer had
12 an obligation to make an employer con-
13 tribution during the plan year, to

14 “(ii) the number of participants under
15 the plan on whose behalf no employer had
16 an obligation to make an employer con-
17 tribution during each of the 2 preceding
18 plan years.

19 “(E) Whether the plan received an amorti-
20 zation extension under section 304(d) or section
21 431(d) of the Internal Revenue Code of 1986
22 for such plan year and, if so, the amount of the
23 difference between the minimum required con-
24 tribution for the year and the minimum re-
25 quired contribution which would have been re-

1 required without regard to the extension, and the
2 period of such extension.

3 “(F) Whether the plan used the shortfall
4 funding method (as such term is used in section
5 305) for such plan year and, if so, the amount
6 of the difference between the minimum required
7 contribution for the year and the minimum re-
8 quired contribution which would have been re-
9 quired without regard to the use of such meth-
10 od, and the period of use of such method.

11 “(G) Whether the plan was in critical or
12 endangered status under section 305 for such
13 plan year, and if so, a summary of any funding
14 improvement or rehabilitation plan (or modi-
15 fication thereto) adopted during the plan year,
16 and the funding ratio of the plan.

17 “(H) The number of employers that with-
18 drew from the plan during the preceding plan
19 year and the aggregate amount of withdrawal
20 liability assessed, or estimated to be assessed,
21 against such withdrawn employers.

22 “(I) In the case of a multiemployer plan
23 that has merged with another plan or to which
24 assets and liabilities have been transferred, the
25 actuarial valuation of the assets and liabilities

1 of each affected plan during the year preceding
2 the effective date of the merger or transfer,
3 based upon the most recent data available as of
4 the day before the first day of the plan year, or
5 other valuation method performed under stand-
6 ards and procedures as the Secretary may pre-
7 scribe by regulation.”.

8 (2) GUIDANCE BY SECRETARY OF LABOR.—

9 (A) IN GENERAL.—Not later than 180
10 days after the date of enactment of this Act,
11 the Secretary of Labor shall publish guidance
12 to assist multiemployer defined benefit plans
13 to—

14 (i) identify and enumerate plan par-
15 ticipants for whom there is no employer
16 with an obligation to make an employer
17 contribution under the plan; and

18 (ii) report such information under sec-
19 tion 103(f)(2)(D) of the Employee Retire-
20 ment Income Security Act of 1974 (as
21 added by this section).

22 (B) WAIVER OF REQUIREMENT.—The Sec-
23 retary of Labor shall waive the requirement
24 under section 103(f)(2)(D) of such Act (as

1 added by this section) for the construction and
2 entertainment industries.

3 (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-
4 ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-
5 JECTIONS.—Section 103(d) of such Act (29 U.S.C.
6 1023(d)) is amended—

7 (1) by redesignating paragraphs (12) and (13)
8 as paragraphs (13) and (14), respectively; and

9 (2) by inserting after paragraph (11) the fol-
10 lowing new paragraph:

11 “(12) A statement explaining the actuarial as-
12 sumptions and methods used in projecting future re-
13 tirements and forms of benefit distributions under
14 the plan.”.

15 (c) FORM AND MANNER OF REPORT.—Section
16 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended
17 by—

18 (1) striking “(3) Within” and inserting—

19 “(A) IN GENERAL.—Within”; and

20 (2) adding at the end the following:

21 “(B) FORM OF REPORT.—The material
22 provided pursuant to subparagraph (A) to sum-
23 marize the latest annual report shall be written
24 in a manner calculated to be understood by the
25 average plan participant.

1 (d) FURNISHING SUMMARY PLAN INFORMATION TO
2 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF
3 MULTIEMPLOYER PLANS.—

4 (1) IN GENERAL.—Section 104 of such Act (29
5 U.S.C. 1024) is amended—

6 (A) in the header, by striking “PARTICI-
7 PANTS” and inserting “PARTICIPANTS AND CER-
8 TAIN EMPLOYERS”;

9 (B) redesignating subsection (d) as sub-
10 section (e); and

11 (C) inserting after subsection (c) the fol-
12 lowing:

13 “(d) FURNISHING SUMMARY PLAN INFORMATION TO
14 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF
15 MULTIEMPLOYER PLANS.—

16 “(1) IN GENERAL.—With respect to a multiem-
17 ployer plan subject to this section, within 30 days
18 after the due date under subsection (a)(1) for the
19 filing of the annual report for the fiscal year of the
20 plan, the administrators shall furnish to each em-
21 ployee organization, employer with an obligation to
22 contribute to the plan, and the Pension Benefit
23 Guaranty Corporation, a report that contains—

24 “(A) a description of the contribution
25 schedules and benefit formulas under the plan,

1 and any modification to such schedules and for-
2 mulas, during such plan year;

3 “(B) the number of employers obligated to
4 contribute to the plan;

5 “(C) a list of the employers that contrib-
6 uted more than 5 percent of the total contribu-
7 tions to the plan during such plan year;

8 “(D) the number of participants under the
9 plan on whose behalf no employer contributions
10 (which, for purposes of this paragraph, means,
11 in connection with a participant, a contribution
12 made by an employer as an employer of such
13 participant) have been made to the plan for
14 such plan year and for each of the 2 preceding
15 plan years;

16 “(E) whether the plan was in critical or
17 endangered status under section 305 for such
18 plan year and, if so, include—

19 “(i) a list of the actions taken by the
20 plan to improve its funding status; and

21 “(ii) a statement describing how a
22 person may obtain a copy of the plan’s im-
23 provement or rehabilitation plan, as appro-
24 priate, adopted under section 305 and the
25 actuarial and financial data that dem-

1 onstrate any action taken by the plan to-
2 ward fiscal improvement;

3 “(H) the number of employers that with-
4 drew from the plan during the preceding plan
5 year and the aggregate amount of withdrawal
6 liability assessed, or estimated to be assessed,
7 against such withdrawn employers, as reported
8 on the annual report for the plan year to which
9 the report under this subsection relates;

10 “(I) in the case of a multiemployer plan
11 that has merged with another plan or to which
12 assets and liabilities have been transferred, the
13 actuarial valuation of the assets and liabilities
14 of each affected plan during the year preceding
15 the effective date of the merger or transfer,
16 based upon the most recent data available as of
17 the day before the first day of the plan year, or
18 other valuation method performed under stand-
19 ards and procedures as the Secretary may pre-
20 scribe by regulation;

21 “(J) a description as to whether the
22 plan—

23 “(i) sought or received an amortiza-
24 tion extension under section 304(d) or sec-

1 tion 431(d) of the Internal Revenue Code
2 of 1986 for such plan year;

3 “(ii) used the shortfall funding meth-
4 od (as such term is used in section 305)
5 for such plan year; or

6 “(iii) was in critical or endangered
7 status under section 305 for such plan
8 year; and

9 “(K) notification of the right under this
10 section of the recipient to a copy of the annual
11 report filed with the Secretary under subsection
12 (a), summary annual report, summary plan de-
13 scription, summary of any material modification
14 of the plan, upon written request, but that—

15 “(i) in no case shall a recipient be en-
16 titled to receive more than one copy of any
17 such report described during any one 12-
18 month period; and

19 “(ii) the administrator may make a
20 reasonable charge to cover copying, mail-
21 ing, and other costs of furnishing copies of
22 information pursuant to this subpara-
23 graph.

24 “(2) EFFECT OF SECTION.—Nothing in this
25 section waives any other provision under this title re-

1 quiring plan administrators to provide, upon request,
2 information to employers that have an obligation to
3 contribution under the plan.”.

4 (e) MODEL FORM.—Not later than 270 days after
5 the date of the enactment of this Act, the Secretary of
6 Labor shall publish a model form for providing the state-
7 ments, schedules, and other material required to be pro-
8 vided under section 104(b)(3) of the Employee Retirement
9 Income Security Act of 1974, as amended by this section.
10 The Secretary of Labor may promulgate any interim final
11 rules as the Secretary determines appropriate to carry out
12 the provisions of this subsection.

13 (f) FIVE-YEAR REPORT WITH RESPECT TO MULTI-
14 EMPLOYER PLANS.—Section 4022A(f) of such Act (29
15 U.S.C. 1322a(f)) is amended by adding at the end the fol-
16 lowing:

17 “(6) Not later than 5 years after the date of
18 the enactment of the Pension Security and Trans-
19 parency Act of 2005, and at least every fifth year
20 thereafter, the corporation shall submit to Congress
21 a report that contains a description of the fiscal con-
22 ditions of the multiemployer pension plan system as
23 of the date of such report based on the information
24 submitted to the corporation under section 104(d).”.

1 (g) CONFORMING AMENDMENT.—Title IV of such
2 Act (29 U.S.C. 1301 et seq.) is amended by striking sec-
3 tion 4011.

4 (h) EFFECTIVE DATES.—

5 (1) IN GENERAL.—The amendments made by
6 this section shall apply to plan years beginning after
7 December 31, 2005.

8 (2) SPECIAL RULE.—Notwithstanding the pro-
9 visions of paragraph (1), the requirement under sec-
10 tion 103(f)(2)(D) of the Employee Retirement In-
11 come Security Act (as added by this section) shall
12 apply to plan years beginning after December 31,
13 2007.

14 **SEC. 504. TIMING OF ANNUAL REPORTING REQUIREMENTS.**

15 (a) FILING AFTER 285 DAYS AFTER PLAN YEAR
16 ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of
17 such Act (29 U.S.C. 1024(a)(1)) is amended by inserting
18 after the first sentence the following new sentence: “In
19 the case of a pension plan, the Secretary may extend the
20 deadline for filing the annual report for any plan year past
21 285 days after the close of the plan year only on a case
22 by case basis and only in cases of hardship, in accordance
23 with regulations which shall be prescribed by the Sec-
24 retary.”.

1 (b) INTERNET DISPLAY OF INFORMATION.—Section
2 104(b) of such Act (29 U.S.C. 1024(b)) is amended by
3 adding at the end the following:

4 “(5) Identification and basic plan information and ac-
5 tuarial information included in the annual report for any
6 plan year shall be filed with the Secretary in an electronic
7 format which accommodates display on the Internet, in ac-
8 cordance with regulations which shall be prescribed by the
9 Secretary. The Secretary shall provide for display of such
10 information included in the annual report, within 90 days
11 after the date of the filing of the annual report, on an
12 Internet website maintained by the Secretary and other
13 appropriate media. Such information shall also be dis-
14 played on any Internet website maintained by the plan
15 sponsor (or by the plan administrator on behalf of the plan
16 sponsor), in accordance with regulations which shall be
17 prescribed by the Secretary.”.

18 (c) SUMMARY ANNUAL REPORT FILED WITHIN 30
19 DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-
20 PORT.—Section 104(b)(3) of such Act (29 U.S.C.
21 1024(b)(3)), as amended by section 503, is amended by—

22 (1) striking “(3)(A) Within 210 days after the
23 close of the fiscal year,” and inserting “(3)(A) With-
24 in 30 days after the due date under subsection

1 (a)(1) for the filing of the annual report for the fis-
2 cal year of the plan”;

3 (2) striking “the latest” and inserting “such”;
4 and

5 (3) adding at the end the following

6 “(C) DATE OF INTERNET DISPLAY.—Dis-
7 play of the summary annual report on the
8 Internet website maintained by the plan spon-
9 sor (or by the plan administrator on behalf of
10 the plan sponsor) by the date required under
11 subparagraph (A) shall be treated as furnishing
12 such report to each participant and beneficiary
13 receiving benefits under the plan by such date,
14 except that such report shall be furnished to
15 each such participant and beneficiary as soon
16 as practicable thereafter, and in no event later
17 the 30 days after such date.”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to plan years beginning after De-
20 cember 31, 2005.

21 **SEC. 505. 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—

1 (1) in paragraph (1)—

2 (A) by striking "(1) the aggregate" and in-
3 serting "(1)(A) the aggregate";

4 (B) by striking the semicolon and inserting
5 "; and";

6 (C) by inserting after subparagraph (A)
7 the following:

8 "(B)(i) the aggregate funding targets attain-
9 ment percentage of the plan (as defined in sub-
10 section (d)) is less than 90 percent; or

11 "(ii) any debt instrument of the plan sponsor or
12 the plan sponsor has received a rating described in
13 subclause (I) or (II) of section 303(i)(5)(A)(i);"; and

14 (2) by redesignating paragraphs (2) and (3) as
15 paragraphs (4) and (5), respectively, and by insert-
16 ing before paragraph (4) (as so redesignated) the
17 following new paragraphs:

18 "(2) the aggregate funding targets attainment
19 percentage of the plan (as defined in subsection (d))
20 is less than 60 percent;

21 "(3)(A) the aggregate funding targets attain-
22 ment percentage of the plan (as defined in sub-
23 section (d)) is less than 75 percent, and

24 "(B) the plan sponsor is in an industry with re-
25 spect to which the corporation determines that there

1 is substantial unemployment or underemployment
2 and the sales and profits are depressed or declin-
3 ing;”.

4 (b) ADDITIONAL INFORMATION REQUIRED.—Section
5 4010 of the Employee Retirement Income Security Act of
6 1974 (29 U.S.C. 1310) is amended by adding at the end
7 the following new subsection:

8 “(d) ADDITIONAL INFORMATION REQUIRED.—

9 “(1) IN GENERAL.—The information submitted
10 to the corporation under subsection (a) shall
11 include—

12 “(A) the amount of benefit liabilities under
13 the plan determined using the assumptions used
14 by the corporation in determining liabilities;

15 “(B) the funding target of the plan deter-
16 mined as if the plan has been in at-risk status
17 for at least 5 plan years; and

18 “(C) the funding target attainment per-
19 centage of the plan.

20 “(2) DEFINITIONS.—For purposes of this sub-
21 section:

22 “(A) VALUE OF PLAN ASSETS.—The term
23 ‘value of plan assets’ means the value of plan
24 assets, as determined under section 303(g)(3).

1 “(B) FUNDING TARGET.—The term ‘fund-
2 ing target’ has the meaning provided under sec-
3 tion 303(d)(1).

4 “(C) FUNDING TARGET ATTAINMENT PER-
5 CENTAGE.—The term ‘funding target attain-
6 ment percentage’ has the meaning provided in
7 section 303(d)(2).

8 “(D) AGGREGATE FUNDING TARGETS AT-
9 TAINMENT PERCENTAGE.—The term ‘aggregate
10 funding targets attainment percentage’ means,
11 with respect to a contributing sponsor for a
12 plan year, the percentage, taking into account
13 all plans maintained by the contributing spon-
14 sor and the members of its controlled group as
15 of the end of such plan year, which—

16 “(i) the aggregate total of the values
17 of plan assets, as of the end of such plan
18 year, of such plans, is of

19 “(ii) the aggregate total of the fund-
20 ing targets of such plans, as of the end of
21 such plan year, taking into account only
22 benefits to which participants and bene-
23 ficiaries have a nonforfeitable right.

1 “(E) AT-RISK STATUS.—The term ‘at-risk
2 status’ has the meaning provided in section
3 303(i)(4).

4 “(e) NOTICE TO CONGRESS.—The Corporation shall,
5 on an annual basis, submit to the Committee on Health,
6 Education, Labor, and Pensions of the Senate and the
7 Committee on Education and the Workforce of the House
8 of Representatives, a summary report of the information
9 submitted to the Corporation under this section.”.

10 (c) EFFECTIVE DATE.—The amendment made by
11 this section shall apply with respect to plan years begin-
12 ning after 2006.

13 **SEC. 506. DISCLOSURE OF TERMINATION INFORMATION TO**
14 **PLAN PARTICIPANTS.**

15 (a) DISTRESS TERMINATIONS.—

16 (1) IN GENERAL.—Section 4041(c)(2) of the
17 Employee Retirement Income Security Act of 1974
18 (29 U.S.C. 1341(c)(2)) is amended by adding at the
19 end the following:

20 “(D) DISCLOSURE OF TERMINATION IN-
21 FORMATION.—

22 “(i) IN GENERAL.—A plan adminis-
23 trator that has filed a notice of intent to
24 terminate under subsection (a)(2) shall
25 provide to an affected party any informa-

1 tion provided to the corporation under
2 paragraph (2) not later than 15 days
3 after—

4 “(I) receipt of a request from the
5 affected party for the information; or

6 “(II) the provision of new infor-
7 mation to the corporation relating to
8 the previous request.

9 “(ii) CONFIDENTIALITY.—

10 “(I) IN GENERAL.—The plan ad-
11 ministrator shall not provide informa-
12 tion under clause (i) in a form that
13 includes any information that may di-
14 rectly or indirectly be associated with,
15 or otherwise identify, an individual
16 participant or beneficiary.

17 “(II) LIMITATION.—A court may
18 limit disclosure under this subpara-
19 graph of confidential information de-
20 scribed in section 552(b) of title 5,
21 United States Code, to any authorized
22 representative of the participants or
23 beneficiaries that agrees to ensure the
24 confidentiality of such information.

1 “(iii) FORM AND MANNER OF INFOR-
2 MATION; CHARGES.—

3 “(I) FORM AND MANNER.—The
4 corporation may prescribe the form
5 and manner of the provision of infor-
6 mation under this subparagraph,
7 which shall include delivery in written,
8 electronic, or other appropriate form
9 to the extent that such form is rea-
10 sonably accessible to individuals to
11 whom the information is required to
12 be provided.

13 “(II) REASONABLE CHARGES.—A
14 plan sponsor may charge a reasonable
15 fee for any information provided
16 under this subparagraph in other than
17 electronic form.

18 “(iv) AUTHORIZED REPRESENTA-
19 TIVE.—For purposes of this subparagraph,
20 the term ‘authorized representative’ means
21 any employee organization representing
22 participants in the pension plan.”.

23 (2) CONFORMING AMENDMENT.—Section
24 4041(c)(1) of the Employee Retirement Income Se-
25 curity Act of 1974 (29 U.S.C. 1341(c)(1)) is amend-

1 ed in subparagraph (C) by striking “subparagraph
2 (B)” and inserting “subparagraphs (B) and (D)”.

3 (b) INVOLUNTARY TERMINATIONS.—

4 (1) IN GENERAL.—Section 4042(c) of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1342(c)) is amended by—

7 (A) striking “(c) If the” and inserting
8 “(e)(1) If the”;

9 (B) redesignating paragraph (3) as para-
10 graph (2); and

11 (C) adding at the end the following:

12 “(3) DISCLOSURE OF TERMINATION INFORMA-
13 TION.—

14 “(A) IN GENERAL.—

15 “(i) INFORMATION FROM PLAN SPON-
16 SOR OR ADMINISTRATOR.—A plan sponsor
17 or plan administrator of a single-employer
18 plan that has received a notice from the
19 corporation of a determination that the
20 plan should be terminated under this sec-
21 tion shall provide to an affected party any
22 information provided to the corporation in
23 conjunction with the plan termination.

24 “(ii) INFORMATION FROM CORPORA-
25 TION.—The corporation shall provide a

1 copy of the administrative record, includ-
2 ing the trusteeship decision record of a ter-
3 mination of a plan described under clause
4 (i).

5 “(B) TIMING OF DISCLOSURE.—The plan
6 sponsor, plan administrator, or the corporation,
7 as applicable, shall provide the information de-
8 scribed in subparagraph (A) not later than 15
9 days after—

10 “(i) receipt of a request from an af-
11 fected party for such information; or

12 “(ii) in the case of information de-
13 scribed under subparagraph (A)(i), the
14 provision of any new information to the
15 corporation relating to a previous request
16 by an affected party.

17 “(C) CONFIDENTIALITY.—

18 “(i) IN GENERAL.—The plan adminis-
19 trator and plan sponsor shall not provide
20 information under subparagraph (A)(i) in
21 a form which includes any information that
22 may directly or indirectly be associated
23 with, or otherwise identify, an individual
24 participant or beneficiary.

1 “(ii) LIMITATION.—A court may limit
2 disclosure under this paragraph of con-
3 fidential information described in section
4 552(b) of title 5, United States Code, to
5 authorized representatives (within the
6 meaning of section 4041(c)(2)(D)(iv)) of
7 the participants or beneficiaries that agree
8 to ensure the confidentiality of such infor-
9 mation.

10 “(D) FORM AND MANNER OF INFORMA-
11 TION; CHARGES.—

12 “(i) FORM AND MANNER.—The cor-
13 poration may prescribe the form and man-
14 ner of the provision of information under
15 this paragraph, which shall include delivery
16 in written, electronic, or other appropriate
17 form to the extent that such form is rea-
18 sonably accessible to individuals to whom
19 the information is required to be provided.

20 “(ii) REASONABLE CHARGES.—A plan
21 sponsor may charge a reasonable fee for
22 any information provided under this para-
23 graph in other than electronic form.”.

24 “(c) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to any plan termination under title

1 IV of the Employee Retirement Income Security Act of
2 1974 (29 U.S.C. 1301 et seq.) with respect to which the
3 notice of intent to terminate (or in the case of a termi-
4 nation by the Pension Benefit Guaranty Corporation, a
5 notice of determination under section 4042 of such Act
6 (29 U.S.C. 1342)) occurs after the date of enactment of
7 this Act.

8 **SEC. 507. BENEFIT SUSPENSION NOTICE.**

9 (a) MODIFICATION OF REGULATION.—The Secretary
10 of Labor shall modify the regulation under subparagraph
11 (B) of section 203(a)(3) of the Employee Retirement In-
12 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to
13 provide that the notification required by such regulation
14 in connection with any suspension of benefits described in
15 such subparagraph—

16 (1) in the case of an employee who returns to
17 service described in section 203(a)(3)(B) (i) or (ii)
18 of such Act after commencement of payment of ben-
19 efits under the plan, shall be made during the first
20 calendar month or the first 4- or 5-week payroll pe-
21 riod ending in a calendar month in which the plan
22 withholds payments, and

23 (2) in the case of any employee who is not de-
24 scribed in paragraph (1)—

1 (A) may be included in the summary plan
2 description for the plan furnished in accordance
3 with section 104(b) of such Act (29 U.S.C.
4 1024(b)), rather than in a separate notice, and
5 (B) need not include a copy of the relevant
6 plan provisions.

7 (b) EFFECTIVE DATE.—The modification made
8 under this section shall apply to plan years beginning after
9 December 31, 2005.

10 **SEC. 508. STUDY AND REPORT BY GOVERNMENT ACCOUNT-**
11 **ABILITY OFFICE.**

12 (a) IN GENERAL.—The Comptroller General of the
13 United States shall conduct a study to determine the effec-
14 tiveness of the enforcement of provisions in the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C. 1001
16 et seq.) and in other Federal laws designed to protect pen-
17 sion plans and the assets and participants of such plan
18 from fraud and mismanagement, including excessive in-
19 vestment management fees, violations of fiduciary duties
20 under Title I of such Act, and the quality of plan assets.

21 (b) CONTENT OF STUDY.—The study described in
22 subsection (a) shall include:

23 (1) An identification of which Federal depart-
24 ments and agencies have responsibility for enforce-

1 ment of these provisions, including the recovery of
2 lost plan assets due to fraud and mismanagement.

3 (2) Identification of all administrative enforce-
4 ment powers, procedures, and strategies used by the
5 Securities and Exchange Commission that have the
6 potential to improve the Department of Labor's en-
7 forcement of the fiduciary provisions of the Em-
8 ployee Retirement Income Security Act of 1974 (29
9 U.S.C. 1001 et seq.).

10 (3) Identification of any statutory or other bar-
11 riers that restrict the Department of Labor's author-
12 ity to use such powers, procedures, and strategies
13 identified in paragraph (2).

14 (4) An evaluation of whether giving additional
15 investigative or enforcement authority to the Pension
16 Benefit Guaranty Corporation or the Securities and
17 Exchange Commission would significantly improve
18 enforcement of those provisions.

19 (5) An evaluation of the current authority of
20 the Pension Benefit Guaranty Corporation to bring
21 actions to recover any funds lost by pension plans
22 due to violations of any fiduciary standards under
23 Title I of such Act or other Federal statutes.

24 (6) The impact that expanding any such au-
25 thority by the Pension Benefit Guaranty Corpora-

1 tion to bring such actions would have on the Cor-
2 poration's solvency.

3 (c) REPORT.—Not later than 6 months after the en-
4 actment of this Act, the Comptroller General shall submit
5 a report to Congress on the study conducted under sub-
6 section (a) that includes such recommendations for legisla-
7 tion or administrative action as the Comptroller General
8 determines are appropriate.

9 **TITLE VI—TREATMENT OF CASH**
10 **BALANCE AND OTHER HY-**
11 **BRID DEFINED BENEFIT PEN-**
12 **SION PLANS**

13 **SEC. 601. PROSPECTIVE APPLICATION OF AGE DISCRIMINA-**
14 **TION, CONVERSION, AND PRESENT VALUE AS-**
15 **SUMPTION RULES.**

16 (a) APPLICATION OF AGE DISCRIMINATION PROHIBI-
17 TIONS.—

18 (1) AMENDMENT OF ERISA.—Section 204(b) of
19 the Employee Retirement Income Security Act of
20 1974 (29 U.S.C. 1054(b)) is amended by adding at
21 the end the following:

22 “(5) SPECIAL RULES FOR CASH BALANCE AND
23 OTHER HYBRID DEFINED BENEFIT PLANS.—

24 “(A) IN GENERAL.—A qualified cash bal-
25 ance plan shall not be treated as violating the

1 requirements of paragraph (1)(H) merely be-
2 cause it may reasonably be expected that the
3 period over which interest credits will be made
4 to a participant's accumulation account (or its
5 equivalent) is longer for a younger participant.
6 This paragraph shall not apply to any plan if
7 the rate of any pay credit or interest credit to
8 such an account under the plan decreases by
9 reason of the participant's attainment of any
10 age.

11 “(B) QUALIFIED CASH BALANCE PLAN.—
12 For purposes of this paragraph—

13 “(i) IN GENERAL.—The term ‘quali-
14 fied cash balance plan’ means a cash bal-
15 ance plan which meets the vesting require-
16 ment under clause (ii) and the interest
17 credit requirement under clause (iii).

18 “(ii) VESTING REQUIREMENTS.—A
19 plan meets the requirements of this clause
20 if an employee who has completed at least
21 3 years of service has a nonforfeitable
22 right to 100 percent of the employee's ac-
23 crued benefit derived from employer con-
24 tributions.

1 “(iii) INTEREST CREDITS.—A plan
2 meets the requirements of this clause if the
3 terms of the plan provide that any interest
4 credit (or equivalent amount) for any plan
5 year shall be at a rate which—

6 “(I) is not less than the applica-
7 ble Federal mid-term interest rate (as
8 determined under section 1274(d)(1)
9 of the Internal Revenue Code of
10 1986), and

11 “(II) is not greater than the
12 greater of the rate determined under
13 subclause (I) or a rate equal to the
14 rate of interest on amounts invested
15 conservatively in long-term investment
16 grade corporate bonds.

17 “(iv) DETERMINATION OF RATES.—
18 For purposes of clause (iii)(II), the rate of
19 interest on amounts invested conservatively
20 in long-term investment grade corporate
21 bonds shall be determined by the Secretary
22 of the Treasury on the basis of 2 or more
23 indices that are selected periodically by the
24 Secretary of the Treasury. The Secretary
25 of the Treasury shall make publicly avail-

1 able the indices and methodology used to
2 determine the rate.

3 “(v) VARIABLE RATE OF INTEREST.—
4 If the interest credit rate under the plan is
5 a variable rate, the plan shall provide that,
6 upon the termination of the plan, the rate
7 of interest used to determine accrued bene-
8 fits under the plan shall be equal to the av-
9 erage of the rates of interest used under
10 the plan during the 5-year period ending
11 on the termination date.

12 “(C) CASH BALANCE PLAN.—For purposes
13 of this paragraph, the term ‘cash balance plan’
14 means a defined benefit plan under which—

15 “(i) the accrued benefit is determined
16 by reference to the balance of a hypo-
17 thetical accumulation account, and

18 “(ii) pay credits and interest credits
19 are credited to such account.

20 “(D) REGULATIONS TO INCLUDE SIMILAR
21 OR OTHER HYBRID PLANS.—

22 “(i) CASH BALANCE PLAN.—The Sec-
23 retary of the Treasury shall issue regula-
24 tions which include in the definition of
25 cash balance plan any defined benefit plan

1 (or any portion of such a plan) which has
2 an effect similar to a cash balance plan.
3 Such regulations may provide that if a
4 plan sponsor represents in communications
5 to participants and beneficiaries that a
6 plan amendment results in a plan being
7 described in the preceding sentence, such
8 plan shall be treated as a cash balance
9 plan.

10 “(ii) QUALIFIED CASH BALANCE
11 PLAN.—The Secretary of the Treasury
12 may in the regulations issued under clause
13 (i) provide for the treatment of a cash bal-
14 ance plan as a qualified cash balance plan
15 in cases where the cash balance plan has
16 an effect similar to the qualified cash bal-
17 ance plan.”.

18 (2) AGE DISCRIMINATION IN EMPLOYMENT
19 ACT.—Section 4(i)(2) of the Age Discrimination of
20 Employment Act of 1967 (29 U.S.C. 623(i)(2)) is
21 amended—

22 (A) by inserting “(A)” after “(2)”, and

23 (B) by adding at the end the following new
24 subparagraph:

1 “(B) A defined benefit plan which is treated as a
2 qualified cash balance plan for purposes of section
3 204(b)(5) of the Employee Retirement Income Security
4 Act of 1974 shall not be treated as violating the require-
5 ments of paragraph (1)(A) merely because it may reason-
6 ably be expected that the period over which interest credits
7 will be made under the plan to a participant’s accumula-
8 tion account (or its equivalent) is longer for a younger
9 participant. This subparagraph shall not apply to any plan
10 if the rate of any pay credit or interest credit to such an
11 account under the plan decreases by reason of the partici-
12 pant’s attainment of any age.”.

13 (3) AMENDMENT OF INTERNAL REVENUE
14 CODE.—Section 411(b) of the Internal Revenue
15 Code of 1986 (relating to accrued benefit require-
16 ments) is amended by adding at the end the fol-
17 lowing:

18 “(5) SPECIAL RULES FOR CASH BALANCE AND
19 OTHER HYBRID DEFINED BENEFIT PLANS.—

20 “(A) IN GENERAL.—A qualified cash bal-
21 ance plan shall not be treated as violating the
22 requirements of paragraph (1)(H) merely be-
23 cause it may reasonably be expected that the
24 period over which interest credits will be made
25 to a participant’s accumulation account (or its

1 equivalent) is longer for a younger participant.
2 This paragraph shall not apply to any plan if
3 the rate of any pay credit or interest credit to
4 such an account under the plan decreases by
5 reason of the participant's attainment of any
6 age.

7 “(B) QUALIFIED CASH BALANCE PLAN.—
8 For purposes of this paragraph—

9 “(i) IN GENERAL.—The term ‘quali-
10 fied cash balance plan’ means a cash bal-
11 ance plan which meets the vesting require-
12 ment under clause (ii) and the interest
13 credit requirement under clause (iii).

14 “(ii) VESTING REQUIREMENTS.—A
15 plan meets the requirements of this clause
16 if an employee who has completed at least
17 3 years of service has a nonforfeitable
18 right to 100 percent of the employee's ac-
19 crued benefit derived from employer con-
20 tributions.

21 “(iii) INTEREST CREDITS.—A plan
22 meets the requirements of this clause if the
23 terms of the plan provide that any interest
24 credit (or equivalent amount) for any plan
25 year shall be at a rate which—

1 “(I) is not less than the applica-
2 ble Federal mid-term interest rate (as
3 determined under section 1274(d)(1)),
4 and

5 “(II) is not greater than the
6 greater of the rate determined under
7 subclause (I) or a rate equal to the
8 rate of interest on amounts invested
9 conservatively in long-term investment
10 grade corporate bonds.

11 “(iv) DETERMINATION OF RATES.—
12 For purposes of clause (iii)(II), the rate of
13 interest on amounts invested conservatively
14 in long-term investment grade corporate
15 bonds shall be determined by the Secretary
16 on the basis of 2 or more indices that are
17 selected periodically by the Secretary. The
18 Secretary shall make publicly available the
19 indices and methodology used to determine
20 the rate.

21 “(v) VARIABLE RATE OF INTEREST.—
22 If the interest credit rate under the plan is
23 a variable rate, the plan shall provide that,
24 upon the termination of the plan, the rate
25 of interest used to determine accrued bene-

1 fits under the plan shall be equal to the av-
2 erage of the rates of interest used under
3 the plan during the 5-year period ending
4 on the termination date.

5 “(C) CASH BALANCE PLAN.—For purposes
6 of this paragraph, the term ‘cash balance plan’
7 means a defined benefit plan under which—

8 “(i) the accrued benefit is determined
9 by reference to the balance of a hypo-
10 thetical accumulation account, and

11 “(ii) pay credits and interest credits
12 are credited to such account.

13 “(D) REGULATIONS TO INCLUDE SIMILAR
14 OR OTHER HYBRID PLANS.—

15 “(i) CASH BALANCE PLAN.—The Sec-
16 retary shall issue regulations which include
17 in the definition of cash balance plan any
18 defined benefit plan (or any portion of
19 such a plan) which has an effect similar to
20 a cash balance plan. Such regulations may
21 provide that if a plan sponsor represents in
22 communications to participants and bene-
23 ficiaries that a plan amendment results in
24 a plan being described in the preceding

1 sentence, such plan shall be treated as a
2 cash balance plan.

3 “(ii) QUALIFIED CASH BALANCE
4 PLAN.—The Secretary may in the regula-
5 tions issued under clause (i) provide for
6 the treatment of a cash balance plan as a
7 qualified cash balance plan in cases where
8 the cash balance plan has an effect similar
9 to the qualified cash balance plan.”.

10 (b) RULES APPLICABLE TO ACCRUED BENEFITS
11 UNDER CONVERTED PLANS.—

12 (1) AMENDMENT OF ERISA.—Section 204(g) of
13 the Employee Retirement Income Security Act of
14 1974 (29 U.S.C. 1054(g)) is amended by adding at
15 the end the following new paragraph:

16 “(6) TREATMENT OF CONVERSIONS TO CASH
17 BALANCE OR OTHER HYBRID PLANS.—

18 “(A) IN GENERAL.—For purposes of this
19 subsection, an applicable plan amendment shall
20 be treated as reducing the accrued benefit of a
21 participant if, under the terms of the plan as in
22 effect after the amendment, the accrued benefit
23 of any participant who was a participant as of
24 the effective date of the amendment may at any
25 time be less than the accrued benefit deter-

1 mined under the method under subparagraph
2 (B), (C), or (D) which is specified in the plan
3 and applies uniformly to all participants. An
4 applicable plan amendment shall in no event be
5 treated as meeting the requirements of any
6 such subparagraph if the conversion described
7 in subparagraph (G)(i) is into a cash balance
8 plan other than a qualified cash balance plan
9 (as defined in subsection (b)(5)(B)).

10 “(B) NO WEARAWAY.—

11 “(i) IN GENERAL.—The accrued ben-
12 efit determined under this subparagraph is
13 the sum of—

14 “(I) the participant’s accrued
15 benefit for years of service before the
16 effective date of the amendment, de-
17 termined under the terms of the plan
18 as in effect before the amendment,
19 plus

20 “(II) except as provided in clause
21 (ii), the participant’s accrued benefit
22 for years of service after the effective
23 date of the amendment, determined
24 under the terms of the plan as in ef-
25 fect after the amendment.

1 “(I) The accrued benefit shall be
2 equal to the greater of the accrued
3 benefit determined under the terms of
4 the plan as in effect both before and
5 after the amendment.

6 “(II) At the election of the par-
7 ticipant, the accrued benefit shall be
8 determined under the terms of the
9 plan as in effect either before or after
10 the amendment.

11 “(C) GREATER OF OLD OR NEW OR ELEC-
12 TION OF EITHER.—The accrued benefit deter-
13 mined under this subparagraph is the accrued
14 benefit determined under 1 of the following
15 methods which is selected by the plan and
16 which is specified in the amendment:

17 “(i) The accrued benefit shall be equal
18 to the greater of the accrued benefit deter-
19 mined under the terms of the plan as in ef-
20 fect both before and after the amendment.

21 “(ii) At the election of the participant,
22 the accrued benefit shall be determined
23 under the terms of the plan as in effect ei-
24 ther before or after the amendment.

1 “(D) METHOD PRESCRIBED BY SEC-
2 RETARY.—The accrued benefit determined
3 under this subparagraph shall be determined
4 under regulations prescribed by the Secretary
5 which are consistent with the purposes of this
6 paragraph and which may require a plan to
7 provide a credit of additional amounts or in-
8 creases in initial account balances in amounts
9 substantially equivalent to the benefits that
10 would be required to be provided to meet the
11 requirements of subparagraphs (B) or (C).

12 “(E) INCLUSION OF PRIOR ACCRUED BEN-
13 EFIT INTO INITIAL ACCOUNT BALANCE.—

14 “(i) IN GENERAL.—If, for purposes of
15 subparagraphs (B), (C), or (D), an appli-
16 cable plan amendment provides that an
17 amount will be initially credited to a par-
18 ticipant’s accumulation account (or its
19 equivalent) on the effective date of the
20 amendment with respect to the partici-
21 pant’s accrued benefit for periods before
22 such date, the requirements of such sub-
23 paragraph shall be treated as met with re-
24 spect to such accrued benefit if the amount
25 initially credited is not less than the

1 present value of the participant's accrued
2 benefit determined by using the applicable
3 mortality table and the lower of the appli-
4 cable interest rate under section
5 205(g)(3)(A), or the interest rate used to
6 credit interest under the plan, as of such
7 date.

8 “(ii) ADJUSTMENTS FOR CERTAIN
9 SUBSIDIZED BENEFITS.—For purposes of
10 subparagraph (B), if any early retirement
11 benefit or retirement-type subsidy (within
12 the meaning of paragraph (6)(B)(i)) is not
13 included in the initial account balance
14 under clause (i), the plan shall credit the
15 accumulation account with the amount of
16 such benefit or subsidy for the plan year in
17 which the participant retires if, as of such
18 time, the participant has met the age,
19 years of service, and other requirements
20 under the plan for entitlement to such ben-
21 efit or subsidy.

22 “(F) REQUIREMENTS WHERE PARTICIPANT
23 OFFERED CHOICE.—If a plan provides a partici-
24 pant with an election described in subparagraph

1 (B)(iii)(II) or (C)(ii), the following rules shall
2 apply:

3 “(i) NOTICE.—The plan shall not be
4 treated as meeting the requirements of ei-
5 ther such subparagraph unless the plan
6 provides the participant a notice of the
7 right to make such election which includes
8 information (meeting such requirements as
9 may be prescribed by the Secretary of the
10 Treasury)—

11 “(I) by which the participant
12 may project benefits under the for-
13 mulas from which the participant may
14 choose and may model the impact of
15 any such choice, and

16 “(II) with respect to cir-
17 cumstances under which a participant
18 may not receive the projected accrued
19 benefits by reason of a plan termi-
20 nation or otherwise.

21 “(ii) SIGNIFICANT REDUCTION OF
22 RATE OF ACCRUAL.—The plan shall pro-
23 vide that if, during any of the first 5 plan
24 years during which such an election is in
25 effect, the plan adopts an amendment

1 which results in a significant reduction in
2 the rate of future benefit accrual (within
3 the meaning of section 204(h)), the ac-
4 crued benefit of the participant shall be de-
5 termined as if the participant had made
6 the election which resulted in the greatest
7 accrued benefit.

8 “(iii) BENEFITS MUST NOT BE CON-
9 TINGENT ON ELECTION.—The plan shall
10 not be treated as meeting the requirements
11 of either such subparagraph if any other
12 benefit is conditioned (directly or indi-
13 rectly) on such election.

14 “(G) APPLICABLE PLAN AMENDMENT.—

15 For purposes of this paragraph—

16 “(i) IN GENERAL.—The term ‘applica-
17 ble plan amendment’ means an amendment
18 to a defined benefit plan which has the ef-
19 fect of converting the plan to a cash bal-
20 ance plan.

21 “(ii) SPECIAL RULE FOR COORDI-
22 NATED BENEFITS.—If the benefits of 2 or
23 more defined benefit plans established or
24 maintained by an employer are coordinated
25 in such a manner as to have the effect of

1 the adoption of an amendment described in
2 clause (i), the sponsor of the defined ben-
3 efit plan or plans providing for such co-
4 ordination shall be treated as having
5 adopted such a plan amendment as of the
6 date such coordination begins.

7 “(iii) MULTIPLE AMENDMENTS.—The
8 Secretary of the Treasury shall issue regu-
9 lations to prevent the avoidance of the pur-
10 poses of this paragraph through the use of
11 2 or more plan amendments rather than a
12 single amendment.

13 “(iv) CASH BALANCE PLAN.—For pur-
14 poses of this paragraph, the term ‘cash
15 balance plan’ has the meaning given such
16 term by subsection (b)(5)(C).

17 “(v) COORDINATION WITH ACCRUAL
18 RULES.—If a plan amendment is treated
19 as meeting the requirements of this para-
20 graph with respect to any participant be-
21 cause such participant is eligible to con-
22 tinue to accrue benefits in the same man-
23 ner as under the terms of the plan in ef-
24 fect before the amendment, the Secretary
25 of the Treasury shall prescribe regulations

1 under which the plan shall not be treated
2 as failing to meet the requirements of sub-
3 paragraph (A), (B), or (C) of section
4 204(b)(1) if the requirements of this para-
5 graph are met.

6 “(H) APPLICATION OF CERTAIN RULES TO
7 EARLY-RETIREMENT BENEFITS.—Rules similar
8 to the rules of clauses (i), (ii), and (iii) of sub-
9 paragraph (B) and subparagraph (C) shall
10 apply in the case of any early retirement benefit
11 or retirement-type subsidy (within the meaning
12 of section 204(g)(2)(A)).”.

13 (2) AMENDMENT OF INTERNAL REVENUE
14 CODE.—Section 411(d) of the Internal Revenue
15 Code of 1986 (relating to special rules) is amended
16 by adding at the end the following new paragraph:

17 “(7) TREATMENT OF CONVERSIONS TO CASH
18 BALANCE OR OTHER HYBRID PLANS.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (6), an applicable plan amendment shall
21 be treated as reducing the accrued benefit of a
22 participant if, under the terms of the plan as in
23 effect after the amendment, the accrued benefit
24 of any participant who was a participant as of
25 the effective date of the amendment may at any

1 time be less than the accrued benefit deter-
2 mined under the method under subparagraph
3 (B), (C), or (D) which is specified in the plan
4 and applies uniformly to all participants. An
5 applicable plan amendment shall in no event be
6 treated as meeting the requirements of any
7 such subparagraph if the conversion described
8 in subparagraph (G)(i) is into a cash balance
9 plan other than a qualified cash balance plan
10 (as defined in subsection (b)(5)(B)).

11 “(B) NO WEARAWAY.—

12 “(i) IN GENERAL.—The accrued ben-
13 efit determined under this subparagraph is
14 the sum of—

15 “(I) the participant’s accrued
16 benefit for years of service before the
17 effective date of the amendment, de-
18 termined under the terms of the plan
19 as in effect before the amendment,
20 plus

21 “(II) except as provided in clause
22 (ii), the participant’s accrued benefit
23 for years of service after the effective
24 date of the amendment, determined

1 under the terms of the plan as in ef-
2 fect after the amendment.

3 A similar rule shall apply in the case of
4 any early retirement benefit or retirement-
5 type subsidy (within the meaning of section
6 411(d)(6)(B)(i)).

7 “(ii) REQUIRED AMOUNTS FOR CER-
8 TAIN PERIODS.—Notwithstanding clause
9 (i)(II), the plan shall provide that either—

10 “(I) the accrued benefit of all
11 participants for each of the first 5
12 plan years to which the amendment
13 applies shall be equal to the greater of
14 the accrued benefit determined under
15 the terms of the plan as in effect both
16 before and after the amendment, or

17 “(II) the accrued benefit for peri-
18 ods after the effective date of the
19 amendment of all participants who, as
20 of the effective date of the amend-
21 ment, had attained the age of 40 and
22 had a combined age and years of serv-
23 ice under the plan of not less than 55
24 shall be determined under either of
25 the methods described in clause (iii)

1 which is selected by the plan and
2 which is specified in the amendment.

3 “(iii) APPLICABLE METHOD.—For
4 purposes of clause (ii)(II), the plan shall
5 select 1 of the following methods:

6 “(I) The accrued benefit shall be
7 equal to the greater of the accrued
8 benefit determined under the terms of
9 the plan as in effect both before and
10 after the amendment.

11 “(II) At the election of the par-
12 ticipant, the accrued benefit shall be
13 determined under the terms of the
14 plan as in effect either before or after
15 the amendment.

16 “(C) GREATER OF OLD OR NEW OR ELEC-
17 TION OF EITHER.—The accrued benefit deter-
18 mined under this subparagraph is the accrued
19 benefit determined under 1 of the following
20 methods which is selected by the plan and
21 which is specified in the amendment:

22 “(i) The accrued benefit shall be equal
23 to the greater of the accrued benefit deter-
24 mined under the terms of the plan as in ef-
25 fect both before and after the amendment.

1 “(ii) At the election of the participant,
2 the accrued benefit shall be determined
3 under the terms of the plan as in effect ei-
4 ther before or after the amendment.

5 “(D) METHOD PRESCRIBED BY SEC-
6 RETARY.—The accrued benefit determined
7 under this subparagraph shall be determined
8 under regulations prescribed by the Secretary
9 which are consistent with the purposes of this
10 paragraph and which may require a plan to
11 provide a credit of additional amounts or in-
12 creases in initial account balances in amounts
13 substantially equivalent to the benefits that
14 would be required to be provided to meet the
15 requirements of subparagraphs (B) or (C).

16 “(E) INCLUSION OF PRIOR ACCRUED BEN-
17 EFIT INTO INITIAL ACCOUNT BALANCE.—

18 “(i) IN GENERAL.—If, for purposes of
19 subparagraphs (B), (C), or (D), an appli-
20 cable plan amendment provides that an
21 amount will be initially credited to a par-
22 ticipant’s accumulation account (or its
23 equivalent) on the effective date of the
24 amendment with respect to the partici-
25 pant’s accrued benefit for periods before

1 such date, the requirements of such sub-
2 paragraph shall be treated as met with re-
3 spect to such accrued benefit if the amount
4 initially credited is not less than the
5 present value of the participant's accrued
6 benefit determined by using the applicable
7 mortality table and the lower of the appli-
8 cable interest rate under section
9 417(e)(3)(A), or the interest rate used to
10 credit interest under the plan, as of such
11 date.

12 “(ii) ADJUSTMENTS FOR CERTAIN
13 SUBSIDIZED BENEFITS.—For purposes of
14 subparagraph (B), if any early retirement
15 benefit or retirement-type subsidy (within
16 the meaning of paragraph (6)(B)(i)) is not
17 included in the initial account balance
18 under clause (i), the plan shall credit the
19 accumulation account with the amount of
20 such benefit or subsidy for the plan year in
21 which the participant retires if, as of such
22 time, the participant has met the age,
23 years of service, and other requirements
24 under the plan for entitlement to such ben-
25 efit or subsidy.

1 “(F) REQUIREMENTS WHERE PARTICIPANT
2 OFFERED CHOICE.—If a plan provides a partici-
3 pant with an election described in subparagraph
4 (B)(iii)(II) or (C)(ii), the following rules shall
5 apply:

6 “(i) NOTICE.—The plan shall not be
7 treated as meeting the requirements of ei-
8 ther such subparagraph unless the plan
9 provides the participant a notice of the
10 right to make such election which includes
11 information (meeting such requirements as
12 may be prescribed by the Secretary)—

13 “(I) by which the participant
14 may project benefits under the for-
15 mulas from which the participant may
16 choose and may model the impact of
17 any such choice, and

18 “(II) with respect to cir-
19 cumstances under which a participant
20 may not receive the projected accrued
21 benefits by reason of a plan termi-
22 nation or otherwise.

23 “(ii) SIGNIFICANT REDUCTION OF
24 RATE OF ACCRUAL.—The plan shall pro-
25 vide that if, during any of the first 5 plan

1 years during which such an election is in
2 effect, the plan adopts an amendment
3 which results in a significant reduction in
4 the rate of future benefit accrual (within
5 the meaning of section 4980F(e)), the ac-
6 crued benefit of the participant shall be de-
7 termined as if the participant had made
8 the election which resulted in the greatest
9 accrued benefit.

10 “(iii) BENEFITS MUST NOT BE CON-
11 TINGENT ON ELECTION.—The plan shall
12 not be treated as meeting the requirements
13 of either such subparagraph if any other
14 benefit is conditioned (directly or indi-
15 rectly) on such election.

16 “(G) APPLICABLE PLAN AMENDMENT.—
17 For purposes of this paragraph—

18 “(i) IN GENERAL.—The term ‘applica-
19 ble plan amendment’ means an amendment
20 to a defined benefit plan which has the ef-
21 fect of converting the plan to a cash bal-
22 ance plan.

23 “(ii) SPECIAL RULE FOR COORDI-
24 NATED BENEFITS.—If the benefits of 2 or
25 more defined benefit plans established or

1 maintained by an employer are coordinated
2 in such a manner as to have the effect of
3 the adoption of an amendment described in
4 clause (i), the sponsor of the defined ben-
5 efit plan or plans providing for such co-
6 ordination shall be treated as having
7 adopted such a plan amendment as of the
8 date such coordination begins.

9 “(iii) MULTIPLE AMENDMENTS.—The
10 Secretary shall issue regulations to prevent
11 the avoidance of the purposes of this para-
12 graph through the use of 2 or more plan
13 amendments rather than a single amend-
14 ment.

15 “(iv) CASH BALANCE PLAN.—For pur-
16 poses of this paragraph, the term ‘cash
17 balance plan’ has the meaning given such
18 term by subsection (b)(5)(C).

19 “(v) COORDINATION WITH ACCRUAL
20 AND NONDISCRIMINATION RULES.—If a
21 plan amendment is treated as meeting the
22 requirements of this paragraph with re-
23 spect to any participant because such par-
24 ticipant is eligible to continue to accrue
25 benefits in the same manner as under the

1 terms of the plan in effect before the
2 amendment, the Secretary shall prescribe
3 regulations under which—

4 “(I) the plan shall not be treated
5 as failing to meet the requirements of
6 subparagraph (A), (B), or (C) of sec-
7 tion 411(b)(1) if the requirements of
8 this paragraph are met, and

9 “(II) the plan shall, subject to
10 such terms and conditions as may be
11 provided in such regulations, not be
12 treated as failing to meet the require-
13 ments of section 401(a)(4) merely be-
14 cause the plan provides any accrual or
15 benefit which is required to be pro-
16 vided under subparagraph (B), (C), or
17 (D) or because only participants as of
18 the effective date of the amendment
19 are so eligible, except that this sub-
20 clause shall only apply if the plan met
21 the requirements of section 401(a)(4)
22 under the terms of the plan as in ef-
23 fect before the amendment.

24 “(H) APPLICATION OF CERTAIN RULES TO
25 EARLY-RETIREMENT BENEFITS.—Rules similar

1 to the rules of clauses (i), (ii), and (iii) of sub-
2 paragraph (B) and subparagraph (C) shall
3 apply in the case of any early retirement benefit
4 or retirement-type subsidy (within the meaning
5 of section 411(d)(6)(B)(i)).”.

6 (c) ASSUMPTIONS USED IN COMPUTING PRESENT
7 VALUE OF ACCRUED BENEFIT.—

8 (1) AMENDMENT OF ERISA.—Section 205(g)(3)
9 of such Act (29 U.S.C. 1055(g)(3)), is amended—

10 (A) by striking “or (B)” in subparagraph
11 (A)(i) and inserting “, (B), or (C)”, and

12 (B) by adding at the end the following new
13 subparagraph:

14 “(C) PRESENT VALUE OF ACCRUED BEN-
15 EFIT UNDER CASH BALANCE PLAN.—Except as
16 provided in regulations, in the case of a quali-
17 fied cash balance plan (as defined in section
18 204(g)(6)(B)), the present value of the accrued
19 benefit of any participant shall, for purposes of
20 paragraphs (1) and (2), be equal to the balance
21 in the participant’s accumulation account (or
22 its equivalent) as of the time the present value
23 determination is being made.”.

1 (2) AMENDMENT OF INTERNAL REVENUE
2 CODE.—Section 417(e)(3) of such Code, is
3 amended—

4 (A) by striking “or (B)” in subparagraph
5 (A)(i) and inserting “, (B), or (C)”, and

6 (B) by adding at the end the following new
7 subparagraph:

8 “(C) PRESENT VALUE OF ACCRUED BEN-
9 EFIT UNDER CASH BALANCE PLAN.—Except as
10 provided in regulations, in the case of a quali-
11 fied cash balance plan (as defined in section
12 411(d)(7)(B)), the present value of the accrued
13 benefit of any participant shall, for purposes of
14 paragraphs (1) and (2), be equal to the balance
15 in the participant’s accumulation account (or
16 its equivalent) as of the time the present value
17 determination is being made.”

18 (d) NO INFERENCE.—Nothing in the amendments
19 made by this section shall be construed to infer the proper
20 treatment of cash balance plans or conversions to cash bal-
21 ance plans under sections 204(b)(1)(H) of the Employee
22 Retirement Income Security Act of 1974, 4(i)(1) of the
23 Age Discrimination in Employment Act of 1967, and
24 411(b)(1)(H) of the Internal Revenue Code of 1986, as
25 in effect before such amendments.

1 (e) EFFECTIVE DATES.—

2 (1) AGE DISCRIMINATION AND LUMP-SUM DIS-
3 TRIBUTIONS.—

4 (A) IN GENERAL.—The amendments made
5 by subsections (a) and (c) shall apply to periods
6 after July 31, 2005.

7 (B) VESTING AND INTEREST CREDIT RE-
8 QUIREMENTS.—In the case of a plan in exist-
9 ence on July 31, 2005, the requirements of
10 clauses (ii) and (iii) of section 411(b)(5)(B) of
11 the Internal Revenue Code of 1986, and of
12 clauses (ii) and (iii) of 204(b)(5)(B) of the Em-
13 ployee Retirement Income Security Act of 1974
14 shall, for purposes of applying the amendments
15 made by subsections (a) and (c), apply to years
16 beginning after December 31, 2006, unless the
17 plan sponsor elects the application of such re-
18 quirements for any period after July 31, 2005,
19 and before the first year beginning after De-
20 cember 31, 2006.

21 (C) SPECIAL RULE FOR COLLECTIVELY
22 BARGAINED PLANS.—In the case of a plan
23 maintained pursuant to 1 or more collective
24 bargaining agreements between employee rep-
25 resentatives and 1 or more employers ratified

1 on or before the date of the enactment of this
2 Act, the requirements described in subpara-
3 graph (B) shall, for purposes of applying the
4 amendments made by subsections (a) and (c),
5 not apply to plan years beginning before—

6 (i) the earlier of—

7 (I) the date on which the last of
8 such collective bargaining agreements
9 terminates (determined without re-
10 gard to any extension thereof on or
11 after such date of enactment), or

12 (II) January 1, 2007, or

13 (ii) January 1, 2009.

14 (2) CONVERSIONS.—The amendments made by
15 subsection (b) shall apply to plan amendments
16 adopted after, and taking effect after, July 31,
17 2005, except that the plan sponsor may elect to have
18 such amendments apply to plan amendments adopt-
19 ed before, and taking effect after, such date.

20 **SEC. 602. REGULATIONS RELATING TO MERGERS AND AC-**
21 **QUISITIONS.**

22 The Secretary of the Treasury or his delegate shall,
23 not later than 12 months after the date of the enactment
24 of this Act, prescribe regulations for the application of the
25 amendments made by, and the provisions of, this title in

1 cases where the conversion of a plan to a cash balance
2 plan is made with respect to a group of employees who
3 become employees by reason of a merger, acquisition, or
4 similar transaction.

5 **TITLE VII—DIVERSIFICATION**
6 **RIGHTS AND OTHER PARTICI-**
7 **PANT PROTECTIONS UNDER**
8 **DEFINED CONTRIBUTION**
9 **PLANS**

10 **SEC. 701. DEFINED CONTRIBUTION PLANS REQUIRED TO**
11 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**
12 **VEST THEIR PLAN ASSETS.**

13 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

14 (1) QUALIFICATION REQUIREMENT.—Section
15 401(a) of the Internal Revenue Code of 1986 (relat-
16 ing to qualified pension, profit-sharing, and stock
17 bonus plans), as amended by section 115 of this Act,
18 is amended by inserting after paragraph (34) the
19 following new paragraph:

20 “(35) DIVERSIFICATION REQUIREMENTS FOR
21 CERTAIN DEFINED CONTRIBUTION PLANS.—

22 “(A) IN GENERAL.—A trust which is part
23 of an applicable defined contribution plan shall
24 not be treated as a qualified trust unless the

1 plan meets the diversification requirements of
2 subparagraphs (B), (C), and (D).

3 “(B) EMPLOYEE CONTRIBUTIONS AND
4 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
5 SECURITIES OR REAL PROPERTY.—In the case
6 of the portion of an applicable individual’s ac-
7 count attributable to employee contributions
8 and elective deferrals which is invested in em-
9 ployer securities or employer real property, a
10 plan meets the requirements of this subpara-
11 graph if the applicable individual may elect to
12 direct the plan to divest any such securities or
13 real property and to reinvest an equivalent
14 amount in other investment options meeting the
15 requirements of subparagraph (D).

16 “(C) EMPLOYER CONTRIBUTIONS IN-
17 VESTED IN EMPLOYER SECURITIES OR REAL
18 PROPERTY.—In the case of the portion of the
19 account attributable to employer contributions
20 other than elective deferrals which is invested in
21 employer securities or employer real property, a
22 plan meets the requirements of this subpara-
23 graph if each applicable individual who—

24 “(i) is a participant who has com-
25 pleted at least 3 years of service, or

1 “(ii) is a beneficiary of a participant
2 described in clause (i) or of a deceased
3 participant,
4 may elect to direct the plan to divest any such
5 securities or real property and to reinvest an
6 equivalent amount in other investment options
7 meeting the requirements of subparagraph (D).

8 “(D) INVESTMENT OPTIONS.—

9 “(i) IN GENERAL.—The requirements
10 of this subparagraph are met if the plan
11 offers not less than 3 investment options,
12 other than employer securities or employer
13 real property, to which an applicable indi-
14 vidual may direct the proceeds from the di-
15 vestment of employer securities or em-
16 ployer real property pursuant to this para-
17 graph, each of which is diversified and has
18 materially different risk and return charac-
19 teristics.

20 “(ii) TREATMENT OF CERTAIN RE-
21 STRICTIONS AND CONDITIONS.—

22 “(I) TIME FOR MAKING INVEST-
23 MENT CHOICES.—A plan shall not be
24 treated as failing to meet the require-
25 ments of this subparagraph merely be-

1 cause the plan limits the time for di-
2 vestment and reinvestment to peri-
3 odic, reasonable opportunities occur-
4 ring no less frequently than quarterly.

5 “(II) CERTAIN RESTRICTIONS
6 AND CONDITIONS NOT ALLOWED.—
7 Except as provided in regulations, a
8 plan shall not meet the requirements
9 of this subparagraph if the plan im-
10 poses restrictions or conditions with
11 respect to the investment of employer
12 securities or employer real property
13 which are not imposed on the invest-
14 ment of other assets of the plan. This
15 subclause shall not apply to any re-
16 strictions or conditions imposed by
17 reason of the application of securities
18 laws.

19 “(E) APPLICABLE DEFINED CONTRIBU-
20 TION PLAN.—For purposes of this paragraph—

21 “(i) IN GENERAL.—The term ‘applica-
22 ble defined contribution plan’ means any
23 defined contribution plan which holds any
24 publicly traded employer securities.

1 “(ii) EXCEPTION FOR CERTAIN
2 ESOPS.—Such term does not include an
3 employee stock ownership plan if—

4 “(I) there are no contributions to
5 such plan (or earnings thereunder)
6 which are held within such plan and
7 are subject to subsection (k) or (m),
8 and

9 “(II) such plan is a separate plan
10 for purposes of section 414(l) with re-
11 spect to any other defined benefit plan
12 or defined contribution plan main-
13 tained by the same employer or em-
14 ployers.

15 “(iii) EXCEPTION FOR ONE PARTICI-
16 PANT PLANS.—Such term does not include
17 a one-participant retirement plan.

18 “(iv) ONE-PARTICIPANT RETIREMENT
19 PLAN.—For purposes of clause (iii), the
20 term ‘one-participant retirement plan’
21 means a retirement plan that—

22 “(I) on the first day of the plan
23 year covered only one individual (or
24 the individual and the individual’s
25 spouse) and the individual owned 100

1 percent of the plan sponsor (whether
2 or not incorporated), or covered only
3 one or more partners (or partners and
4 their spouses) in the plan sponsor,

5 “(II) meets the minimum cov-
6 erage requirements of section 410(b)
7 without being combined with any
8 other plan of the business that covers
9 the employees of the business,

10 “(III) does not provide benefits
11 to anyone except the individual (and
12 the individual’s spouse) or the part-
13 ners (and their spouses),

14 “(IV) does not cover a business
15 that is a member of an affiliated serv-
16 ice group, a controlled group of cor-
17 porations, or a group of businesses
18 under common control, and

19 “(V) does not cover a business
20 that uses the services of leased em-
21 ployees (within the meaning of section
22 414(n)).

23 For purposes of this clause, the term ‘part-
24 ner’ includes a 2-percent shareholder (as

1 defined in section 1372(b)) of an S cor-
2 poration.

3 “(F) CERTAIN PLANS TREATED AS HOLD-
4 ING PUBLICLY TRADED EMPLOYER SECURI-
5 TIES.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in regulations or in clause (ii), a plan
8 holding employer securities which are not
9 publicly traded employer securities shall be
10 treated as holding publicly traded employer
11 securities if any employer corporation, or
12 any member of a controlled group of cor-
13 porations which includes such employer
14 corporation, has issued a class of stock
15 which is a publicly traded employer secu-
16 rity.

17 “(ii) EXCEPTION FOR CERTAIN CON-
18 TROLLED GROUPS WITH PUBLICLY TRAD-
19 ED SECURITIES.—Clause (i) shall not
20 apply to a plan if—

21 “(I) no employer corporation, or
22 parent corporation of an employer
23 corporation, has issued any publicly
24 traded employer security, and

1 “(II) no employer corporation, or
2 parent corporation of an employer
3 corporation, has issued any special
4 class of stock which grants particular
5 rights to, or bears particular risks for,
6 the holder or issuer with respect to
7 any corporation described in clause (i)
8 which has issued any publicly traded
9 employer security.

10 “(iii) DEFINITIONS.—For purposes of
11 this subparagraph, the term—

12 “(I) ‘controlled group of corpora-
13 tions’ has the meaning given such
14 term by section 1563(a), except that
15 ‘50 percent’ shall be substituted for
16 ‘80 percent’ each place it appears,

17 “(II) ‘employer corporation’
18 means a corporation which is an em-
19 ployer maintaining the plan, and

20 “(III) ‘parent corporation’ has
21 the meaning given such term by sec-
22 tion 424(e).

23 “(G) OTHER DEFINITIONS.—For purposes
24 of this paragraph—

1 “(i) APPLICABLE INDIVIDUAL.—The
2 term ‘applicable individual’ means—

3 “(I) any participant in the plan,
4 and

5 “(II) any beneficiary who has an
6 account under the plan with respect to
7 which the beneficiary is entitled to ex-
8 ercise the rights of a participant.

9 “(ii) ELECTIVE DEFERRAL.—The
10 term ‘elective deferral’ means an employer
11 contribution described in section
12 402(g)(3)(A).

13 “(iii) EMPLOYER SECURITY.—The
14 term ‘employer security’ has the meaning
15 given such term by section 407(d)(1) of
16 the Employee Retirement Income Security
17 Act of 1974.

18 “(iv) EMPLOYER REAL PROPERTY.—
19 The term ‘employer real property’ has the
20 meaning given such term by section
21 407(d)(2) of the Employee Retirement In-
22 come Security Act of 1974.

23 “(v) EMPLOYEE STOCK OWNERSHIP
24 PLAN.—The term ‘employee stock owner-

1 ship plan' has the meaning given such
2 term by section 4975(e)(7).

3 “(vi) PUBLICLY TRADED EMPLOYER
4 SECURITIES.—The term ‘publicly traded
5 employer securities’ means employer secu-
6 rities which are readily tradable on an es-
7 tablished securities market.

8 “(vii) YEAR OF SERVICE.—The term
9 ‘year of service’ has the meaning given
10 such term by section 411(a)(5).

11 “(H) TRANSITION RULE FOR SECURITIES
12 OR REAL PROPERTY ATTRIBUTABLE TO EM-
13 PLOYER CONTRIBUTIONS.—

14 “(i) RULES PHASED IN OVER 3
15 YEARS.—

16 “(I) IN GENERAL.—In the case
17 of the portion of an account to which
18 subparagraph (C) applies and which
19 consists of employer securities or em-
20 ployer real property acquired in a plan
21 year beginning before January 1,
22 2006, subparagraph (C) shall only
23 apply to the applicable percentage of
24 such securities or real property. This
25 subparagraph shall be applied sepa-

1 rately with respect to each class of se-
2 curities and employer real property.

3 “(II) EXCEPTION FOR CERTAIN
4 PARTICIPANTS AGED 55 OR OVER.—
5 Subclause (I) shall not apply to an
6 applicable individual who is a partici-
7 pant who has attained age 55 and
8 completed at least 3 years of service
9 before the first plan year beginning
10 after December 31, 2005.

11 “(ii) APPLICABLE PERCENTAGE.—For
12 purposes of clause (i), the applicable per-
13 centage shall be determined as follows:

Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 401(a)(28)(B) of such Code
16 (relating to additional requirements relating to
17 employee stock ownership plans) is amended by
18 adding at the end the following new clause:

19 “(v) EXCEPTION.—This subparagraph
20 shall not apply to an applicable defined
21 contribution plan (as defined in paragraph
22 (35)(E)).”

1 (B) Section 409(h)(7) of such Code is
2 amended by inserting “or subparagraph (B) or
3 (C) of section 401(a)(35)” before the period at
4 the end.

5 (C) Section 4980(c)(3)(A) of such Code is
6 amended by striking “if—” and all that follows
7 and inserting “if the requirements of subpara-
8 graphs (B), (C), and (D) are met.”

9 (b) AMENDMENTS OF ERISA.—

10 (1) IN GENERAL.—Section 204 of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C.
12 1054) is amended by redesignating subsection (j) as
13 subsection (k) and by inserting after subsection (i)
14 the following new subsection:

15 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN
16 INDIVIDUAL ACCOUNT PLANS.—

17 “(1) IN GENERAL.—An applicable individual ac-
18 count plan shall meet the diversification require-
19 ments of paragraphs (2), (3), and (4).

20 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
21 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-
22 TIES OR REAL PROPERTY.—In the case of the por-
23 tion of an applicable individual’s account attrib-
24 utable to employee contributions and elective defer-
25 rals which is invested in employer securities or em-

1 ployer real property, a plan meets the requirements
2 of this paragraph if the applicable individual may
3 elect to direct the plan to divest any such securities
4 or real property and to reinvest an equivalent
5 amount in other investment options meeting the re-
6 quirements of paragraph (4).

7 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
8 EMPLOYER SECURITIES OR REAL PROPERTY.—In the
9 case of the portion of the account attributable to
10 employer contributions other than elective deferrals
11 which is invested in employer securities or employer
12 real property, a plan meets the requirements of this
13 paragraph if each applicable individual who—

14 “(A) is a participant who has completed at
15 least 3 years of service, or

16 “(B) is a beneficiary of a participant de-
17 scribed in subparagraph (A) or of a deceased
18 participant,

19 may elect to direct the plan to divest any such secu-
20 rities or real property and to reinvest an equivalent
21 amount in other investment options meeting the re-
22 quirements of paragraph (4).

23 “(4) INVESTMENT OPTIONS.—

24 “(A) IN GENERAL.—The requirements of
25 this paragraph are met if the plan offers not

1 less than 3 investment options, other than em-
2 ployer securities or employer real property, to
3 which an applicable individual may direct the
4 proceeds from the divestment of employer secu-
5 rities or employer real property pursuant to this
6 subsection, each of which is diversified and has
7 materially different risk and return characteris-
8 tics.

9 “(B) TREATMENT OF CERTAIN RESTRIC-
10 TIONS AND CONDITIONS.—

11 “(i) TIME FOR MAKING INVESTMENT
12 CHOICES.—A plan shall not be treated as
13 failing to meet the requirements of this
14 paragraph merely because the plan limits
15 the time for divestment and reinvestment
16 to periodic, reasonable opportunities occur-
17 ring no less frequently than quarterly.

18 “(ii) CERTAIN RESTRICTIONS AND
19 CONDITIONS NOT ALLOWED.—Except as
20 provided in regulations, a plan shall not
21 meet the requirements of this paragraph if
22 the plan imposes restrictions or conditions
23 with respect to the investment of employer
24 securities or employer real property which
25 are not imposed on the investment of other

1 assets of the plan. This subparagraph shall
2 not apply to any restrictions or conditions
3 imposed by reason of the application of se-
4 curities laws.

5 “(5) APPLICABLE INDIVIDUAL ACCOUNT
6 PLAN.—For purposes of this subsection—

7 “(A) IN GENERAL.—The term ‘applicable
8 individual account plan’ means any individual
9 account plan (as defined in section 3(34)) which
10 holds any publicly traded employer securities.

11 “(B) EXCEPTION FOR CERTAIN ESOPS.—
12 Such term does not include an employee stock
13 ownership plan if—

14 “(i) there are no contributions to such
15 plan (or earnings thereunder) which are
16 held within such plan and are subject to
17 subsection (k) or (m) of section 401 of the
18 Internal Revenue Code of 1986, and

19 “(ii) such plan is a separate plan (for
20 purposes of section 414(l) of such Code)
21 with respect to any other defined benefit
22 plan or individual account plan maintained
23 by the same employer or employers.

24 “(C) EXCEPTION FOR ONE PARTICIPANT
25 PLANS.—Such term shall not include a one-par-

1 participant retirement plan (as defined in section
2 101(i)(8)(B)).

3 “(D) CERTAIN PLANS TREATED AS HOLD-
4 ING PUBLICLY TRADED EMPLOYER SECURI-
5 TIES.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in regulations or in clause (ii), a plan
8 holding employer securities which are not
9 publicly traded employer securities shall be
10 treated as holding publicly traded employer
11 securities if any employer corporation, or
12 any member of a controlled group of cor-
13 porations which includes such employer
14 corporation, has issued a class of stock
15 which is a publicly traded employer secu-
16 rity.

17 “(ii) EXCEPTION FOR CERTAIN CON-
18 TROLLED GROUPS WITH PUBLICLY TRAD-
19 ED SECURITIES.—Clause (i) shall not
20 apply to a plan if—

21 “(I) no employer corporation, or
22 parent corporation of an employer
23 corporation, has issued any publicly
24 traded employer security, and

1 “(II) no employer corporation, or
2 parent corporation of an employer
3 corporation, has issued any special
4 class of stock which grants particular
5 rights to, or bears particular risks for,
6 the holder or issuer with respect to
7 any corporation described in clause (i)
8 which has issued any publicly traded
9 employer security.

10 “(iii) DEFINITIONS.—For purposes of
11 this subparagraph, the term—

12 “(I) ‘controlled group of corpora-
13 tions’ has the meaning given such
14 term by section 1563(a) of the Inter-
15 nal Revenue Code of 1986, except
16 that ‘50 percent’ shall be substituted
17 for ‘80 percent’ each place it appears,

18 “(II) ‘employer corporation’
19 means a corporation which is an em-
20 ployer maintaining the plan, and

21 “(III) ‘parent corporation’ has
22 the meaning given such term by sec-
23 tion 424(e) of such Code.

24 “(6) OTHER DEFINITIONS.—For purposes of
25 this paragraph—

1 “(A) APPLICABLE INDIVIDUAL.—The term
2 ‘applicable individual’ means—

3 “(i) any participant in the plan, and

4 “(ii) any beneficiary who has an ac-
5 count under the plan with respect to which
6 the beneficiary is entitled to exercise the
7 rights of a participant.

8 “(B) ELECTIVE DEFERRAL.—The term
9 ‘elective deferral’ means an employer contribu-
10 tion described in section 402(g)(3)(A) of the In-
11 ternal Revenue Code of 1986.

12 “(C) EMPLOYER SECURITY.—The term
13 ‘employer security’ has the meaning given such
14 term by section 407(d)(1).

15 “(D) EMPLOYER REAL PROPERTY.—The
16 term ‘employer real property’ has the meaning
17 given such term by section 407(d)(2).

18 “(E) EMPLOYEE STOCK OWNERSHIP
19 PLAN.—The term ‘employee stock ownership
20 plan’ has the meaning given such term by sec-
21 tion 4975(e)(7) of such Code.

22 “(F) PUBLICLY TRADED EMPLOYER SECUR-
23 ITIES.—The term ‘publicly traded employer
24 securities’ means employer securities which are

1 readily tradable on an established securities
2 market.

3 “(G) YEAR OF SERVICE.—The term ‘year
4 of service’ has the meaning given such term by
5 section 203(b)(2).

6 “(7) TRANSITION RULE FOR SECURITIES OR
7 REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-
8 TRIBUTIONS.—

9 “(A) RULES PHASED IN OVER 3 YEARS.—

10 “(i) IN GENERAL.—In the case of the
11 portion of an account to which paragraph
12 (3) applies and which consists of employer
13 securities or employer real property ac-
14 quired in a plan year beginning before
15 January 1, 2006, paragraph (3) shall only
16 apply to the applicable percentage of such
17 securities or real property. This subpara-
18 graph shall be applied separately with re-
19 spect to each class of securities and em-
20 ployer real property.

21 “(ii) EXCEPTION FOR CERTAIN PAR-
22 TICIPANTS AGED 55 OR OVER.—Clause (i)
23 shall not apply to an applicable individual
24 who is a participant who has attained age
25 55 and completed at least 3 years of serv-

1 ice before the first plan year beginning
2 after December 31, 2005.

3 “(B) APPLICABLE PERCENTAGE.—For
4 purposes of subparagraph (A), the applicable
5 percentage shall be determined as follows:

Plan year to which paragraph (3) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.”.

6 (2) CONFORMING AMENDMENT.—Section
7 407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is
8 amended by adding at the end the following:

**“(D) For diversification requirements for quali-
fying employer securities and qualifying real prop-
erty held in certain individual account plans, see
section 204(j).”**

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—Except as provided in para-
11 graphs (2) and (3), the amendments made by this
12 section shall apply to plan years beginning after De-
13 cember 31, 2005.

14 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
15 GAINED AGREEMENTS.—In the case of a plan main-
16 tained pursuant to 1 or more collective bargaining
17 agreements between employee representatives and 1
18 or more employers ratified on or before the date of
19 the enactment of this Act, paragraph (1) shall be
20 applied to benefits pursuant to, and individuals cov-

1 ered by, any such agreement by substituting for
2 “December 31, 2005” the earlier of—

3 (A) the later of—

4 (i) December 31, 2006, or

5 (ii) the date on which the last of such
6 collective bargaining agreements termi-
7 nates (determined without regard to any
8 extension thereof after such date of enact-
9 ment), or

10 (B) December 31, 2007.

11 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-
12 CURITIES HELD IN AN ESOP.—

13 (A) IN GENERAL.—In the case of employer
14 securities to which this paragraph applies, the
15 amendments made by this section shall apply to
16 plan years beginning after the earlier of—

17 (i) December 31, 2006, or

18 (ii) the first date on which the fair
19 market value of such securities exceeds the
20 guaranteed minimum value described in
21 subparagraph (B)(ii).

22 (B) APPLICABLE SECURITIES.—This para-
23 graph shall apply to employer securities which
24 are attributable to employer contributions other

1 than elective deferrals, and which, on Sep-
2 tember 17, 2003—

3 (i) consist of preferred stock, and

4 (ii) are within an employee stock own-
5 ership plan (as defined in section
6 4975(e)(7) of the Internal Revenue Code
7 of 1986), the terms of which provide that
8 the value of the securities cannot be less
9 than the guaranteed minimum value speci-
10 fied by the plan on such date.

11 (C) COORDINATION WITH TRANSITION
12 RULE.—In applying section 401(a)(35)(H) of
13 the Internal Revenue Code of 1986 and section
14 204(j)(7) of the Employee Retirement Income
15 Security Act of 1974 (as added by this section)
16 to employer securities to which this paragraph
17 applies, the applicable percentage shall be de-
18 termined without regard to this paragraph.

19 **SEC. 702. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**
20 **CURITIES OR REAL PROPERTY.**

21 (a) IN GENERAL.—Section 101 of the Employee Re-
22 tirement Income Security Act of 1974 (29 U.S.C. 1021),
23 as amended by this Act, is amended by redesignating sub-
24 section (m) as subsection (n) and by inserting after sub-
25 section (l) the following:

1 “(m) NOTICE OF RIGHT TO DIVEST.—Not later than
2 30 days before the first date on which an applicable indi-
3 vidual of an applicable individual account plan is eligible
4 to exercise the right under section 204(j) to direct the pro-
5 ceeds from the divestment of employer securities or em-
6 ployer real property with respect to any type of contribu-
7 tion, the administrator shall provide to such individual a
8 notice—

9 “(1) setting forth such right under such sec-
10 tion, and

11 “(2) describing the importance of diversifying
12 the investment of retirement account assets.

13 The notice required by this subsection shall be written in
14 a manner calculated to be understood by the average plan
15 participant and may be delivered in written, electronic, or
16 other appropriate form to the extent that such form is rea-
17 sonably accessible to the recipient.”

18 (b) PENALTIES.—Section 502(c)(7) of the Employee
19 Retirement Income Security Act of 1974 (29 U.S.C.
20 1132(c)(7)) is amended by striking “section 101(i)” and
21 inserting “subsection (i) or (m) of section 101”.

22 (c) MODEL NOTICE.—The Secretary of the Treasury
23 shall, within 180 days after the date of the enactment of
24 this subsection, prescribe a model notice for purposes of

1 satisfying the requirements of the amendments made by
2 this section.

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to plan years beginning after
6 December 31, 2005.

7 (2) TRANSITION RULE.—If notice under section
8 101(m) of the Employee Retirement Income Secu-
9 rity Act of 1974 (as added by this section) would
10 otherwise be required to be provided before the 90th
11 day after the date of the enactment of this Act, such
12 notice shall not be required to be provided until such
13 90th day.

14 **SEC. 703. PERIODIC PENSION BENEFIT STATEMENTS.**

15 (a) AMENDMENTS OF ERISA.—

16 (1) IN GENERAL.—Section 105(a) of the Em-
17 ployee Retirement Income Security Act of 1974 (29
18 U.S.C. 1025(a)) is amended to read as follows:

19 “(a) REQUIREMENTS TO PROVIDE PENSION BEN-
20 EFIT STATEMENTS.—

21 “(1) REQUIREMENTS.—

22 “(A) INDIVIDUAL ACCOUNT PLAN.—The
23 administrator of an individual account plan
24 (other than a one-participant retirement plan

1 described in section 101(i)(8)(B)) shall furnish
2 a pension benefit statement—

3 “(i) at least once each calendar quar-
4 ter to a participant or beneficiary who has
5 the right to direct the investment of assets
6 in his or her account under the plan,

7 “(ii) at least once each calendar year
8 to a participant or beneficiary who has his
9 or her own account under the plan but
10 does not have the right to direct the invest-
11 ment of assets in that account, and

12 “(iii) upon written request to a plan
13 beneficiary not described in clause (i) or
14 (ii).

15 “(B) DEFINED BENEFIT PLAN.—The ad-
16 ministrator of a defined benefit plan (other
17 than a one-participant retirement plan de-
18 scribed in section 101(i)(8)(B)) shall furnish a
19 pension benefit statement—

20 “(i) at least once every 3 years to
21 each participant with a nonforfeitable ac-
22 crued benefit and who is employed by the
23 employer maintaining the plan at the time
24 the statement is to be furnished, and

1 “(iii) shall be written in a manner cal-
2 culated to be understood by the average
3 plan participant, and

4 “(iv) may be delivered in written, elec-
5 tronic, or other appropriate form to the ex-
6 tent such form is reasonably accessible to
7 the participant or beneficiary.

8 “(B) ADDITIONAL INFORMATION.—In the
9 case of an individual account plan, any pension
10 benefit statement under clause (i) or (ii) of
11 paragraph (1)(A) shall include—

12 “(i) the value of each investment to
13 which assets in the individual account have
14 been allocated, determined as of the most
15 recent valuation date under the plan, in-
16 cluding the value of any assets held in the
17 form of employer securities or employer
18 real property, without regard to whether
19 such securities or real property were con-
20 tributed by the plan sponsor or acquired at
21 the direction of the plan or of the partici-
22 pant or beneficiary, and

23 “(ii) in the case of a pension benefit
24 statement under paragraph (1)(A)(i)—

1 “(I) an explanation of any limita-
2 tions or restrictions on any right of
3 the participant or beneficiary under
4 the plan to direct an investment, and

5 “(II) a notice that investments in
6 any individual account may not be
7 adequately diversified if the value of
8 any investment in the account exceeds
9 20 percent of the fair market value of
10 all investments in the account.

11 “(C) ALTERNATIVE NOTICE.—The require-
12 ments of subparagraph (A)(i)(II) are met if, at
13 least annually and in accordance with require-
14 ments of the Secretary, the plan—

15 “(i) updates the information described
16 in such paragraph which is provided in the
17 pension benefit statement, or

18 “(ii) provides in a separate statement
19 such information as is necessary to enable
20 a participant or beneficiary to determine
21 their nonforfeitable vested benefits.

22 “(3) DEFINED BENEFIT PLANS.—

23 “(A) ALTERNATIVE NOTICE.—In the case
24 of a defined benefit plan, the requirements of
25 paragraph (1)(B)(i) shall be treated as met

1 with respect to a participant if at least once
2 each year the administrator provides to the par-
3 ticipant notice of the availability of the pension
4 benefit statement and the ways in which the
5 participant may obtain such statement. Such
6 notice may be delivered in written, electronic, or
7 other appropriate form to the extent such form
8 is reasonably accessible to the participant.

9 “(B) YEARS IN WHICH NO BENEFITS AC-
10 CRUE.—The Secretary may provide that years
11 in which no employee or former employee bene-
12 fits (within the meaning of section 410(b) of
13 the Internal Revenue Code of 1986) under the
14 plan need not be taken into account in deter-
15 mining the 3-year period under paragraph
16 (1)(B)(i).”

17 (2) CONFORMING AMENDMENTS.—

18 (A) Section 105 of the Employee Retire-
19 ment Income Security Act of 1974 (29 U.S.C.
20 1025) is amended by striking subsection (d).

21 (B) Section 105(b) of such Act (29 U.S.C.
22 1025(b)) is amended to read as follows:

23 “(b) LIMITATION ON NUMBER OF STATEMENTS.—In
24 no case shall a participant or beneficiary of a plan be enti-
25 tled to more than 1 statement described in subparagraph

1 (A)(iii) or (B)(ii) of subsection (a)(1), whichever is appli-
2 cable, in any 12-month period.”

3 (C) Section 502(c)(1) of such Act (29
4 U.S.C. 1132(c)(1)) is amended by striking “or
5 section 101(f)” and inserting “section 101(f),
6 or section 105(a)”.

7 (b) MODEL STATEMENTS.—

8 (1) IN GENERAL.—The Secretary of Labor
9 shall, within 180 days after the date of the enact-
10 ment of this section, develop 1 or more model benefit
11 statements that are written in a manner calculated
12 to be understood by the average plan participant and
13 that may be used by plan administrators in com-
14 plying with the requirements of section 105 of the
15 Employee Retirement Income Security Act of 1974.

16 (2) INTERIM FINAL RULES.—The Secretary of
17 Labor may promulgate any interim final rules as the
18 Secretary determines appropriate to carry out the
19 provisions of this subsection.

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to plan years beginning after
23 December 31, 2006.

24 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
25 GAINED AGREEMENTS.—In the case of a plan main-

1 tained pursuant to 1 or more collective bargaining
2 agreements between employee representatives and 1
3 or more employers ratified on or before the date of
4 the enactment of this Act, paragraph (1) shall be
5 applied to benefits pursuant to, and individuals cov-
6 ered by, any such agreement by substituting for
7 “December 31, 2006” the earlier of—

8 (A) the later of—

9 (i) December 31, 2007, or

10 (ii) the date on which the last of such
11 collective bargaining agreements termi-
12 nates (determined without regard to any
13 extension thereof after such date of enact-
14 ment), or

15 (B) December 31, 2008.

16 **SEC. 704. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**
17 **BLACKOUT PERIODS.**

18 (a) AMENDMENTS OF ERISA.—

19 (1) IN GENERAL.—Section 101(i) of the Em-
20 ployee Retirement Income Security Act of 1974 (29
21 U.S.C. 1021(i)) is amended—

22 (A) by striking clauses (i) through (iv) of
23 paragraph (8)(B) and inserting:

24 “(i) on the first day of the plan
25 year—

1 “(I) covered only one individual
2 (or the individual and the individual’s
3 spouse) and the individual (or the in-
4 dividual and the individual’s spouse)
5 owned 100 percent of the plan spon-
6 sor (whether or not incorporated), or

7 “(II) covered only one or more
8 partners (or partners and their
9 spouses) in the plan sponsor, and”,
10 and

11 (B) in paragraph (8)(B), by redesignating
12 clause (v) as clause (ii).

13 (2) EFFECTIVE DATE.—The amendments made
14 by this subsection shall take effect as if included in
15 the provisions of section 306 of Public Law 107–204
16 (116 Stat. 745 et seq.).

17 **SEC. 705. ALLOWANCE OF, AND CREDIT FOR, ADDITIONAL**

18 **IRA PAYMENTS IN CERTAIN BANKRUPTCY**

19 **CASES.**

20 (a) ALLOWANCE OF CONTRIBUTIONS.—Section
21 219(b)(5) of the Internal Revenue Code of 1986 (relating
22 to deductible amount) is amended by redesignating sub-
23 paragraph (C) as subparagraph (D) and by inserting after
24 subparagraph (B) the following new subparagraph:

1 “(C) CATCHUP CONTRIBUTIONS FOR CER-
2 TAIN INDIVIDUALS.—

3 “(i) IN GENERAL.—In the case of an
4 applicable individual who elects to make a
5 qualified retirement contribution in addi-
6 tion to the deductible amount determined
7 under subparagraph (A)—

8 “(I) the deductible amount for
9 any taxable year shall be increased by
10 an amount equal to 3 times the appli-
11 cable amount determined under sub-
12 paragraph (B) for such taxable year,
13 and

14 “(II) subparagraph (B) shall not
15 apply.

16 “(ii) APPLICABLE INDIVIDUAL.—For
17 purposes of this subparagraph, the term
18 ‘applicable individual’ means, with respect
19 to any taxable year, any individual who
20 was a qualified participant in a qualified
21 cash or deferred arrangement (as defined
22 in section 401(k)) of an employer described
23 in clause (iii) under which the employer
24 matched at least 50 percent of the employ-

1 ee's contributions to such arrangement
2 with stock of such employer.

3 “(iii) EMPLOYER DESCRIBED.—An
4 employer is described in this clause if, in
5 any taxable year preceding the taxable year
6 described in clause (ii)—

7 “(I) such employer (or any con-
8 trolling corporation of such employer)
9 was a debtor in a case under title 11
10 of the United States Code, or similar
11 Federal or State law, and

12 “(II) such employer (or any other
13 person) was subject to an indictment
14 or conviction resulting from business
15 transactions related to such case.

16 “(iv) QUALIFIED PARTICIPANT.—For
17 purposes of clause (ii), the term ‘qualified
18 participant’ means any applicable indi-
19 vidual who was a participant in the cash or
20 deferred arrangement described in clause
21 (i) on the date that is 6 months before the
22 filing of the case described in clause (iii).

23 “(v) TERMINATION.—This subpara-
24 graph shall not apply to taxable years be-
25 ginning after December 31, 2009.”

1 (b) SAVER'S CREDIT EXPANDED TO INCLUDE
2 CATCHUP CONTRIBUTIONS.—

3 (1) IN GENERAL.—Section 25B of the Internal
4 Revenue Code of 1986 (relating to credit for elective
5 deferrals and IRA contributions by certain individ-
6 uals) is amended by redesignating subsection (h) as
7 subsection (i) and by inserting after subsection (g)
8 the following new subsection:

9 “(h) ADDITIONAL CREDIT FOR CERTAIN CATCHUP
10 CONTRIBUTIONS.—

11 “(1) IN GENERAL.—In the case of an eligible
12 individual who is an applicable individual under sec-
13 tion 219(b)(5)(C) for any taxable year, the amount
14 of the credit allowable under subsection (a) for the
15 taxable year shall be increased by 50 percent of so
16 much of the qualified retirement contributions (as
17 defined in section 219(e)) of the individual for the
18 taxable year as exceeds the deductible amount for
19 the taxable year under section 219(b)(5) (without
20 regard to subparagraphs (B) and (C) thereof).

21 “(2) COORDINATION WITH OTHER CONTRIBU-
22 TIONS.—For purposes of this section—

23 “(A) any contribution to which this sub-
24 section applies shall not be taken into account
25 in determining the amount of the credit allow-

1 (1) by redesignating subparagraphs (A) and
2 (B) as clauses (i) and (ii), respectively, and by in-
3 serting “(A)” after “(c)(1)”,

4 (2) in subparagraph (A)(ii) (as redesignated by
5 paragraph (1)), by inserting before the period the
6 following: “, except that this clause shall not apply
7 in connection with such participant or beneficiary
8 for any blackout period during which the ability of
9 such participant or beneficiary to direct the invest-
10 ment of the assets in his or her account is sus-
11 pended by a plan sponsor or fiduciary”, and

12 (3) by adding at the end the following new sub-
13 paragraphs:

14 “(B)(i) If a person referred to in subparagraph
15 (A)(ii) meets the requirements of this title in connection
16 with authorizing and implementing the blackout period,
17 any person who is otherwise a fiduciary shall not be liable
18 under this title for any loss occurring during such period
19 as a result of any exercise by the participant or beneficiary
20 of control over assets in his or her account before the pe-
21 riod. Matters to be considered in determining whether
22 such person has satisfied the requirements of this title in-
23 clude, but are not limited to, whether such person—

24 “(I) has considered the reasonableness of the
25 expected blackout period,

1 “(II) has provided the notice required under
2 section 101(i)(1), and

3 “(III) has acted in accordance with the require-
4 ments of subsection (a) in determining whether to
5 enter into the blackout period.

6 “(ii) For purposes of this subsection, if a blackout
7 period arises in connection with a change in the invest-
8 ment options offered under the plan, a participant or bene-
9 ficiary shall be deemed to have exercised control over the
10 assets in his or her account prior to the blackout period
11 if, after notice of the change in investment options is given
12 to such participant or beneficiary, assets in the account
13 of the participant or beneficiary are transferred—

14 “(I) to plan investment options in accordance
15 with the affirmative election of the participant or
16 beneficiary; or

17 “(II) in the absence of such an election and in
18 the case in which fiduciary relief was provided under
19 this subsection for the prior investment options, to
20 plan investment options in the manner set forth in
21 such notice.

22 “(C) For purposes of this paragraph, the term ‘black-
23 out period’ has the meaning given such term by section
24 101(i)(7).”

1 (b) GUIDANCE.—Not later than 180 days after the
2 date of enactment of this Act, the Secretary of Labor, in
3 consultation with the Secretary of the Treasury, shall
4 issue interim final regulations providing guidance, includ-
5 ing safe harbors, on how plan sponsors or any other af-
6 fected fiduciaries can satisfy their fiduciary responsibilities
7 during any blackout period during which the ability of a
8 participant or beneficiary to direct the investment of as-
9 sets in his or her individual account is suspended.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—The amendments made by
12 this section shall apply to plan years beginning after
13 December 31, 2005.

14 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
15 GAINED AGREEMENTS.—In the case of a plan main-
16 tained pursuant to 1 or more collective bargaining
17 agreements between employee representatives and 1
18 or more employers ratified on or before the date of
19 the enactment of this Act, paragraph (1) shall be
20 applied to benefits pursuant to, and individuals cov-
21 ered by, any such agreement by substituting for
22 “December 31, 2005” the earlier of—

23 (A) the later of—

24 (i) December 31, 2006, or

1 (ii) the date on which the last of such
2 collective bargaining agreements termi-
3 nates (determined without regard to any
4 extension thereof after such date of enact-
5 ment), or
6 (B) December 31, 2007.

7 **SEC. 707. INCREASE IN MAXIMUM BOND AMOUNT.**

8 (a) IN GENERAL.—Section 412(a) of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C. 1112)
10 is amended by adding at the end the following: “In the
11 case of a plan that holds employer securities (within the
12 meaning of section 407(d)(1)), this subsection shall be ap-
13 plied by substituting ‘\$1,000,000’ for ‘\$500,000’ each
14 place it appears.”

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2005.

18 **TITLE VIII—INFORMATION TO**
19 **ASSIST PENSION PLAN PAR-**
20 **TICIPANTS**

21 **SEC. 801. DEFINED CONTRIBUTION PLANS REQUIRED TO**
22 **PROVIDE ADEQUATE INVESTMENT EDU-**
23 **CATION TO PARTICIPANTS.**

24 (a) ADEQUATE INVESTMENT EDUCATION.—

1 (1) IN GENERAL.—Section 101 of the Employee
2 Retirement Income Security Act of 1974 (29 U.S.C.
3 1024), as amended by this Act, is amended by redese-
4 ignating subsection (n) as subsection (o) and by in-
5 serting after subsection (m) the following:

6 “(n) BASIC INVESTMENT GUIDELINES.—

7 “(1) IN GENERAL.—The administrator of an in-
8 dividual account plan (other than a one-participant
9 retirement plan described in subsection (i)(8)(B))
10 shall furnish at least once each year to each partici-
11 pant or beneficiary who has the right to direct the
12 investment of assets in his or her account the model
13 form relating to basic investment guidelines which is
14 described in paragraph (2).

15 “(2) MODEL FORM.—

16 “(A) IN GENERAL.—The Secretary shall,
17 in consultation with the Secretary of Treasury,
18 develop and make available to individual ac-
19 count plans for distribution under paragraph
20 (1) a model form containing basic guidelines for
21 investing for retirement. Except as otherwise
22 provided by the Secretary, such guidelines shall
23 include—

24 “(i) information on the benefits of di-
25 versification,

1 “(ii) information on the essential dif-
2 ferences, in terms of risk and return, of
3 pension plan investments, including stocks,
4 bonds, mutual funds, and money market
5 investments,

6 “(iii) information on how an individ-
7 ual’s pension plan investment allocations
8 may differ depending on the individual’s
9 age and years to retirement and on other
10 factors determined by the Secretary,

11 “(iv) sources of information where in-
12 dividuals may learn more about pension
13 rights, individual investing, and investment
14 advice, and

15 “(v) such other information related to
16 individual investing as the Secretary deter-
17 mines appropriate.

18 “(B) CALCULATION INFORMATION.—The
19 model form under subparagraph (A) shall in-
20 clude addresses for Internet sites, and a work-
21 sheet, which a participant or beneficiary may
22 use to calculate—

23 “(i) the retirement age value of the
24 participant’s or beneficiary’s nonforfeitable
25 pension benefits under the plan (expressed

1 as an annuity amount and determined by
2 reference to varied historical annual rates
3 of return and annuity interest rates), and
4 “(ii) other important amounts relating
5 to retirement savings, including the
6 amount which a participant or beneficiary
7 would be required to save annually to pro-
8 vide a retirement income equal to various
9 percentages of their current salary (ad-
10 justed for expected growth prior to retire-
11 ment).

12 The Secretary shall develop an Internet site
13 which an individual may use in making such
14 calculations and the address for such site shall
15 be included with the form.

16 “(C) PUBLIC COMMENT.—The Secretary of
17 Labor shall provide at least 90 days for public
18 comment before publishing final notice of the
19 model form.

20 “(3) RULES RELATING TO FORM AND STATE-
21 MENT.—The model form under paragraph (2)—

22 “(A) shall be written in a manner cal-
23 culated to be understood by the average plan
24 participant, and

1 “(B) may be delivered in written, elec-
2 tronic, or other appropriate form to the extent
3 such form is reasonably accessible to partici-
4 pants and beneficiaries.”

5 (2) ENFORCEMENT.—Section 502(c)(7) of such
6 Act (29 U.S.C. 1132(c)(7)), as amended by this Act,
7 is amended by striking “or (l)” and inserting “, (l),
8 or (n)”.

9 (c) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to plan years beginning after
12 December 31, 2006.

13 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
14 GAINED AGREEMENTS.—In the case of a plan main-
15 tained pursuant to 1 or more collective bargaining
16 agreements between employee representatives and 1
17 or more employers ratified on or before the date of
18 the enactment of this Act, paragraph (1) shall be
19 applied to benefits pursuant to, and individuals cov-
20 ered by, any such agreement by substituting for
21 “December 31, 2006” the earlier of—

22 (A) the later of—

23 (i) December 31, 2007, or

24 (ii) the date on which the last of such
25 collective bargaining agreements termi-

1 nates (determined without regard to any
2 extension thereof after such date of enact-
3 ment), or

4 (B) December 31, 2008.

5 **SEC. 802. INDEPENDENT INVESTMENT ADVICE PROVIDED**
6 **TO PLAN PARTICIPANTS.**

7 (a) IN GENERAL.—Section 404 of the Employee Re-
8 tirement Income Security Act of 1974 (29 U.S.C. 1104)
9 is amended by adding at the end the following new sub-
10 section:

11 “(e) INDEPENDENT INVESTMENT ADVISER.—

12 “(1) IN GENERAL.—In the case of an individual
13 account plan which permits a plan participant or
14 beneficiary to direct the investment of the assets in
15 his or her account, if a plan sponsor or other person
16 who is a fiduciary designates and monitors a quali-
17 fied investment adviser pursuant to the requirements
18 of paragraph (3), such fiduciary—

19 “(A) shall be deemed to have satisfied the
20 requirements under this section for the prudent
21 designation and periodic review of an invest-
22 ment adviser with whom the plan sponsor or
23 other person who is a fiduciary enters into an
24 arrangement for the provision of advice referred
25 to in section 3(21)(A)(ii),

1 “(B) shall not be liable under this section
2 for any loss, or by reason of any breach, with
3 respect to the provision of investment advice
4 given by such adviser to any plan participant or
5 beneficiary, and

6 “(C) shall not be liable for any co-fiduciary
7 liability under subsections (a)(2) and (b) of sec-
8 tion 405 with respect to the provision of invest-
9 ment advice given by such adviser to any plan
10 participant or beneficiary.

11 “(2) QUALIFIED INVESTMENT ADVISER.—

12 “(A) IN GENERAL.—For purposes of this
13 subsection, the term ‘qualified investment ad-
14 viser’ means, with respect to a plan, a person—

15 “(i) who is a fiduciary of the plan by
16 reason of the provision of investment ad-
17 vice by such person to a plan participant
18 or beneficiary;

19 “(ii) who—

20 “(I) is registered as an invest-
21 ment adviser under the Investment
22 Advisers Act of 1940 (15 U.S.C. 80b-
23 1 et seq.),

24 “(II) is registered as an invest-
25 ment adviser under the laws of the

1 State in which such adviser maintains
2 the principal office and place of busi-
3 ness of such adviser, but only if such
4 State laws are consistent with section
5 203A of the Investment Advisers Act
6 of 1940 (15 U.S.C. 80b-3a),

7 “(III) is a bank or similar finan-
8 cial institution referred to in section
9 408(b)(4),

10 “(IV) is an insurance company
11 qualified to do business under the
12 laws of a State, or

13 “(V) is any other comparably
14 qualified entity which satisfies such
15 criteria as the Secretary determines
16 appropriate, consistent with the pur-
17 poses of this subsection, and

18 “(iii) who meets the requirements of
19 subparagraph (B).

20 “(B) ADVISER REQUIREMENTS.—The re-
21 quirements of this subparagraph are met if
22 every individual employed (or otherwise com-
23 pensated) by a person described in subpara-
24 graph (A)(ii) who provides investment advice on

1 “(A) the plan sponsor or other person who
2 is a fiduciary in designating a qualified invest-
3 ment adviser receives at the time of the des-
4 ignation, and annually thereafter, a written
5 verification from the qualified investment ad-
6 viser that the investment adviser—

7 “(i) is and remains a qualified invest-
8 ment adviser,

9 “(ii) acknowledges that the investment
10 adviser is a fiduciary with respect to the
11 plan and is solely responsible for its invest-
12 ment advice,

13 “(iii) has reviewed the plan documents
14 (including investment options) and has de-
15 termined that its relationship with the plan
16 and the investment advice provided to any
17 plan participant or beneficiary, including
18 any fees or other compensation it will re-
19 ceive, will not constitute a violation of sec-
20 tion 406,

21 “(iv) will, in providing investment ad-
22 vice to any participant or beneficiary, con-
23 sider any employer securities or employer
24 real property allocated to his or her ac-
25 count, and

1 “(v) has the necessary insurance cov-
2 erage (as determined by the Secretary) for
3 any claim by any plan participant or bene-
4 ficiary,

5 “(B) the plan sponsor or other person who
6 is a fiduciary in designating a qualified invest-
7 ment adviser reviews the documents described
8 in paragraph (4) provided by such adviser and
9 determines that there is no material reason not
10 to enter into an arrangement for the provision
11 of advice by such qualified investment adviser,
12 and

13 “(C) the plan sponsor or other person who
14 is a fiduciary in designating a qualified invest-
15 ment adviser, within 30 days of having informa-
16 tion brought to its attention that the invest-
17 ment adviser is no longer qualified or that a
18 substantial number of plan participants or
19 beneficiaries have raised concerns about the
20 services being provided by the investment
21 adviser—

22 “(i) investigates such information and
23 concerns, and

24 “(ii) determines that there is no mate-
25 rial reason not to continue the designation

1 of the adviser as a qualified investment ad-
2 viser.

3 “(4) DOCUMENTATION.—A qualified investment
4 adviser shall provide the following documents to the
5 plan sponsor or other person who is a fiduciary in
6 designating the adviser:

7 “(A) The contract with the plan sponsor or
8 other person who is a fiduciary for the services
9 to be provided by the investment adviser to the
10 plan participants and beneficiaries.

11 “(B) A disclosure as to any fees or other
12 compensation that will be received by the in-
13 vestment adviser for the provision of such in-
14 vestment advice and as to any fees and other
15 compensation that will be received as a result of
16 a participant’s investment election.

17 “(C) The Uniform Application for Invest-
18 ment Adviser Registration as filed with the Se-
19 curities and Exchange Commission or a sub-
20 stantially similar disclosure application as de-
21 termined by and filed with the Secretary.

22 “(5) TREATMENT AS FIDUCIARY.—Any quali-
23 fied investment adviser that acknowledges it is a fi-
24 duciary pursuant to paragraph (3)(A)(ii) shall be
25 deemed a fiduciary under this part with respect to

1 the provision of investment advice to a plan partici-
2 pant or beneficiary.”

3 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of
4 such Act is amended by inserting “(other than a qualified
5 investment adviser)” after “fiduciary”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply with respect to investment advisers
8 designated after the date of the enactment of this Act.

9 **SEC. 803. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
10 **NING SERVICES.**

11 (a) IN GENERAL.—Subsection (m) of section 132 of
12 the Internal Revenue Code of 1986 (defining qualified re-
13 tirement services) is amended by adding at the end the
14 following new paragraph:

15 “(4) NO CONSTRUCTIVE RECEIPT.—

16 “(A) IN GENERAL.—No amount shall be
17 included in the gross income of any employee
18 solely because the employee may choose between
19 any qualified retirement planning services pro-
20 vided by an eligible investment advisor and
21 compensation which would otherwise be includ-
22 ible in the gross income of such employee. The
23 preceding sentence shall apply to highly com-
24 pensated employees only if the choice described
25 in such sentence is available on substantially

1 the same terms to each member of the group of
2 employees normally provided education and in-
3 formation regarding the employer's qualified
4 employer plan.

5 “(B) LIMITATION.—The maximum amount
6 which may be excluded under subparagraph (A)
7 with respect to any employee for any taxable
8 year shall not exceed \$1,000.

9 “(C) ELIGIBLE INVESTMENT ADVISER.—
10 For purposes of this paragraph, the term ‘eligi-
11 ble investment adviser’ means, with respect to
12 a plan, a person—

13 “(i) who—

14 “(I) is registered as an invest-
15 ment adviser under the Investment
16 Advisers Act of 1940 (15 U.S.C. 80b-
17 1 et seq.),

18 “(II) is registered as an invest-
19 ment adviser under the laws of the
20 State in which such adviser maintains
21 the principal office and place of busi-
22 ness of such adviser, but only if such
23 State laws are consistent with section
24 203A of the Investment Advisers Act
25 of 1940 (15 U.S.C. 80b-3a),

1 “(III) is a bank or similar finan-
2 cial institution referred to in section
3 408(b)(4),

4 “(IV) is an insurance company
5 qualified to do business under the
6 laws of a State, or

7 “(V) is any other comparably
8 qualified entity which satisfies such
9 criteria as the Secretary determines
10 appropriate, consistent with the pur-
11 poses of this subsection, and

12 “(ii) who meets the requirements of
13 subparagraph (D).

14 “(D) ADVISER REQUIREMENTS.—The re-
15 quirements of this subparagraph are met if
16 every individual employed (or otherwise com-
17 pensated) by a person described in subpara-
18 graph (C)(i) who provides investment advice on
19 behalf of such person to any plan participant or
20 beneficiary is—

21 “(i) an individual described in sub-
22 clause (I) of subparagraph (C)(i),

23 “(ii) an individual described in sub-
24 clause (II) of subparagraph (C)(i), but

1 only if such State has an examination re-
2 quirement to qualify for registration,

3 “ (iii) registered as a broker or dealer
4 under the Securities Exchange Act of 1934
5 (15 U.S.C. 78a et seq.),

6 “ (iv) a registered representative as de-
7 scribed in section 3(a)(18) of the Securi-
8 ties Exchange Act of 1934 (15 U.S.C.
9 78c(a)(18)) or section 202(a)(17) of the
10 Investment Advisers Act of 1940 (15
11 U.S.C. 80b-2(a)(17)), or

12 “ (v) any other comparably qualified
13 individual who satisfies such criteria as the
14 Secretary determines appropriate, con-
15 sistent with the purposes of this para-
16 graph.

17 “ (E) TERMINATION.—This paragraph
18 shall not apply to taxable years beginning after
19 December 31, 2010.”

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 403(b)(3)(B) of such Code is
22 amended by inserting “132(m)(4),” after
23 “132(f)(4),”.

24 (2) Section 414(s)(2) of such Code is amended
25 by inserting “132(m)(4),” after “132(f)(4),”.

1 **TITLE IX—PROVISIONS RELAT-**
2 **ING TO SPOUSAL PENSION**
3 **PROTECTION**

4 **SEC. 901. REGULATIONS ON TIME AND ORDER OF**
5 **ISSUANCE OF DOMESTIC RELATIONS OR-**
6 **DERS.**

7 Not later than 1 year after the date of the enactment
8 of this Act, the Secretary of Labor shall issue regulations
9 under section 206(d)(3) of the Employee Retirement Secu-
10 rity Act of 1974 and section 414(p) of the Internal Rev-
11 enue Code of 1986 which clarify that—

12 (1) a domestic relations order otherwise meet-
13 ing the requirements to be a qualified domestic rela-
14 tions order, including the requirements of section
15 206(d)(3)(D) of such Act and section 414(p)(3) of
16 such Code, shall not fail to be treated as a qualified
17 domestic relations order solely because—

18 (A) the order is issued after, or revises, an-
19 other domestic relations order or qualified do-
20 mestic relations order; or

21 (B) of the time at which it is issued; and

22 (2) any order described in paragraph (1) shall
23 be subject to the same requirements and protections
24 which apply to qualified domestic relations orders,

1 including the provisions of section 206(d)(3)(H) of
2 such Act and section 414(p)(7) of such Code.

3 **SEC. 902. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**
4 **ROAD RETIREMENT ANNUITIES INDE-**
5 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**
6 **PLOYEE.**

7 (a) IN GENERAL.—Section 2 of the Railroad Retire-
8 ment Act of 1974 (45 U.S.C. 231a) is amended—

9 (1) in subsection (c)(4)(i), by striking “(A) is
10 entitled to an annuity under subsection (a)(1) and
11 (B)”;

12 (2) in subsection (e)(5), by striking “or di-
13 vorced wife” the second place it appears.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect 1 year after the date of the
16 enactment of this Act.

17 **SEC. 903. EXTENSION OF TIER II RAILROAD RETIREMENT**
18 **BENEFITS TO SURVIVING FORMER SPOUSES**
19 **PURSUANT TO DIVORCE AGREEMENTS.**

20 (a) IN GENERAL.—Section 5 of the Railroad Retire-
21 ment Act of 1974 (45 U.S.C. 231d) is amended by adding
22 at the end the following:

23 “(d) Notwithstanding any other provision of law, the
24 payment of any portion of an annuity computed under sec-
25 tion 3(b) to a surviving former spouse in accordance with

1 a court decree of divorce, annulment, or legal separation
2 or the terms of any court-approved property settlement
3 incident to any such court decree shall not be terminated
4 upon the death of the individual who performed the service
5 with respect to which such annuity is so computed unless
6 such termination is otherwise required by the terms of
7 such court decree.”

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall take effect 1 year after the date of the
10 enactment of this Act.

11 **SEC. 904. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**
12 **NUITY OPTION.**

13 (a) AMENDMENTS TO INTERNAL REVENUE CODE.—

14 (1) ELECTION OF SURVIVOR ANNUITY.—Section
15 417(a)(1)(A) of the Internal Revenue Code of 1986
16 is amended—

17 (A) in clause (i), by striking “, and” and
18 inserting a comma;

19 (B) by redesignating clause (ii) as clause
20 (iii); and

21 (C) by inserting after clause (i) the fol-
22 lowing:

23 “(ii) if the participant elects a waiver
24 under clause (i), may elect the qualified op-

1 tional survivor annuity at any time during the
2 applicable election period, and”.

3 (2) DEFINITION.—Section 417 of such Code is
4 amended by adding at the end the following:

5 “(g) DEFINITION OF QUALIFIED OPTIONAL SUR-
6 VIVOR ANNUITY.—

7 “(1) IN GENERAL.—For purposes of this sec-
8 tion, the term ‘qualified optional survivor annuity’
9 means an annuity—

10 “(A) for the life of the participant with a
11 survivor annuity for the life of the spouse which
12 is equal to the applicable percentage of the
13 amount of the annuity which is payable during
14 the joint lives of the participant and the spouse,
15 and

16 “(B) which is the actuarial equivalent of a
17 single annuity for the life of the participant.

18 Such term also includes any annuity in a form hav-
19 ing the effect of an annuity described in the pre-
20 ceding sentence.

21 “(2) APPLICABLE PERCENTAGE.—

22 “(A) IN GENERAL.—For purposes of para-
23 graph (1), if the survivor annuity percentage—

24 “(i) is less than 75 percent, the appli-
25 cable percentage is 75 percent, and

1 “(ii) is greater than or equal to 75
2 percent, the applicable percentage is 50
3 percent.

4 “(B) SURVIVOR ANNUITY PERCENTAGE.—
5 For purposes of subparagraph (A), the term
6 ‘survivor annuity percentage’ means the per-
7 centage which the survivor annuity under the
8 plan’s qualified joint and survivor annuity bears
9 to the annuity payable during the joint lives of
10 the participant and the spouse.”

11 (3) NOTICE.—Section 417(a)(3)(A)(i) of such
12 Code is amended by inserting “and of the qualified
13 optional survivor annuity” after “annuity”.

14 (b) AMENDMENTS TO ERISA.—

15 (1) ELECTION OF SURVIVOR ANNUITY.—Section
16 205(c)(1)(A) of the Employee Retirement Income
17 Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is
18 amended—

19 (A) in clause (i), by striking “, and” and
20 inserting a comma;

21 (B) by redesignating clause (ii) as clause
22 (iii); and

23 (C) by inserting after clause (i) the fol-
24 lowing:

1 “(ii) if the participant elects a waiver
2 under clause (i), may elect the qualified op-
3 tional survivor annuity at any time during the
4 applicable election period, and”.

5 (2) DEFINITION.—Section 205(d) of such Act
6 (29 U.S.C. 1055(d)) is amended—

7 (A) by inserting “(1)” after “(d)”;

8 (B) by redesignating paragraphs (1) and
9 (2) as subparagraphs (A) and (B), respectively;
10 and

11 (C) by adding at the end the following:

12 “(2)(A) For purposes of this section, the term ‘quali-
13 fied optional survivor annuity’ means an annuity—

14 “(i) for the life of the participant with a sur-
15 vivor annuity for the life of the spouse which is
16 equal to the applicable percentage of the amount of
17 the annuity which is payable during the joint lives
18 of the participant and the spouse, and

19 “(ii) which is the actuarial equivalent of a sin-
20 gle annuity for the life of the participant.

21 Such term also includes any annuity in a form having the
22 effect of an annuity described in the preceding sentence.

23 “(B)(i) For purposes of subparagraph (A), if the sur-
24 vivor annuity percentage—

1 “(I) is less than 75 percent, the applicable per-
2 centage is 75 percent, and

3 “(II) is greater than or equal to 75 percent, the
4 applicable percentage is 50 percent.

5 “(ii) For purposes of clause (i), the term ‘survivor
6 annuity percentage’ means the percentage which the sur-
7 vivor annuity under the plan’s qualified joint and survivor
8 annuity bears to the annuity payable during the joint lives
9 of the participant and the spouse.”

10 (3) NOTICE.—Section 205(c)(3)(A)(i) of such
11 Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-
12 serting “and of the qualified optional survivor annu-
13 ity” after “annuity”.

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendments made by
16 this section shall apply to plan years beginning after
17 December 31, 2005.

18 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
19 GAINED PLANS.—In the case of a plan maintained
20 pursuant to 1 or more collective bargaining agree-
21 ments between employee representatives and 1 or
22 more employers ratified on or before the date of the
23 enactment of this Act, the amendments made by this
24 section shall apply to the first plan year beginning
25 on or after the earlier of—

- 1 (A) the later of—
- 2 (i) January 1, 2006, or
- 3 (ii) the date on which the last of such
- 4 collective bargaining agreements termi-
- 5 nates (determined without regard to any
- 6 extension thereof after the date of enact-
- 7 ment of this Act), or
- 8 (B) January 1, 2007.

9 **TITLE X—IMPROVEMENTS IN**

10 **PORTABILITY AND DISTRIBUTION**

11 **RULES**

12 **SEC. 1001. CLARIFICATIONS REGARDING PURCHASE OF**

13 **PERMISSIVE SERVICE CREDIT.**

14 (a) IN GENERAL.—Section 415(n) of the Internal

15 Revenue Code of 1986 (relating to special rules for the

16 purchase of permissive service credit) is amended—

17 (1) by striking “an employee” in paragraph (1)

18 and inserting “a participant”, and

19 (2) by adding at the end of paragraph (3)(A)

20 the following new flush sentence:

21 “Such term may include service credit for peri-

22 ods for which there is no performance of serv-

23 ice, and notwithstanding clause (ii), may in-

24 clude service credited in order to provide an in-

1 creased benefit for service credit which a partic-
2 ipant is receiving under the plan.”

3 (b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE
4 TRANSFERS.—Section 415(n)(3) of such Code is amended
5 by adding at the end the following new subparagraph:

6 “(D) SPECIAL RULES FOR TRUSTEE-TO-
7 TRUSTEE TRANSFERS.—In the case of a trust-
8 ee-to-trustee transfer to which section
9 403(b)(13)(A) or 457(e)(17)(A) applies (with-
10 out regard to whether the transfer is made be-
11 tween plans maintained by the same em-
12 ployer)—

13 “(i) the limitations of subparagraph
14 (B) shall not apply in determining whether
15 the transfer is for the purchase of permis-
16 sive service credit, and

17 “(ii) the distribution rules applicable
18 under this title to the defined benefit gov-
19 ernmental plan to which any amounts are
20 so transferred shall apply to such amounts
21 and any benefits attributable to such
22 amounts.”

23 (c) NONQUALIFIED SERVICE.—Section 415(n)(3) of
24 such Code is amended—

1 (1) by striking “permissive service credit attrib-
2 utable to nonqualified service” each place it appears
3 in subparagraph (B) and inserting “nonqualified
4 service credit”,

5 (2) by striking so much of subparagraph (C) as
6 precedes clause (i) and inserting:

7 “(C) NONQUALIFIED SERVICE CREDIT.—
8 For purposes of subparagraph (B), the term
9 ‘nonqualified service credit’ means permissive
10 service credit other than that allowed with re-
11 spect to—”, and

12 (3) by striking “elementary or secondary edu-
13 cation (through grade 12), as determined under
14 State law” and inserting “elementary or secondary
15 education (through grade 12), or a comparable level
16 of education, as determined under the applicable law
17 of the jurisdiction in which the service was per-
18 formed”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 subsections (a) and (c) shall take effect as if in-
22 cluded in the amendments made by section 1526 of
23 the Taxpayer Relief Act of 1997.

24 (2) SUBSECTION (b).—The amendments made
25 by subsection (b) shall take effect as if included in

1 the amendments made by section 647 of the Eco-
2 nomic Growth and Tax Relief Reconciliation Act of
3 2001.

4 **SEC. 1002. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**
5 **ANNUITY CONTRACTS.**

6 (a) IN GENERAL.—Subparagraph (A) of section
7 402(c)(2) (relating to the maximum amount which may
8 be rolled over) is amended—

9 (1) by striking “which is part of a plan which
10 is a defined contribution plan and which agrees to
11 separately account” and inserting “or to an annuity
12 contract described in section 403(b) and such trust
13 or contract provides for separate accounting”; and

14 (2) by inserting “(and earnings thereon)” after
15 “so transferred”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply to taxable years beginning after
18 December 31, 2005.

19 **SEC. 1003. CLARIFICATION OF MINIMUM DISTRIBUTION**
20 **RULES FOR GOVERNMENTAL PLANS.**

21 The Secretary of the Treasury shall issue regulations
22 under which a governmental plan (as defined in section
23 414(d) of the Internal Revenue Code of 1986) shall, for
24 all years to which section 401(a)(9) of such Code applies
25 to such plan, be treated as having complied with such sec-

1 tion 401(a)(9) if such plan complies with a reasonable
2 good faith interpretation of such section 401(a)(9).

3 **SEC. 1004. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**
4 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**
5 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**
6 **PLOYEES.**

7 (a) IN GENERAL.—Section 72(t) of the Internal Rev-
8 enue Code of 1986 (relating to subsection not to apply
9 to certain distributions) is amended by adding at the end
10 the following new paragraph:

11 “(10) DISTRIBUTIONS TO QUALIFIED PUBLIC
12 SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

13 “(A) IN GENERAL.—In the case of a dis-
14 tribution to a qualified public safety employee
15 from a governmental plan (within the meaning
16 of section 414(d)) which is a defined benefit
17 plan, paragraph (2)(A)(v) shall be applied by
18 substituting ‘age 50’ for ‘age 55’.

19 “(B) QUALIFIED PUBLIC SAFETY EM-
20 PLOYEE.—For purposes of this paragraph, the
21 term ‘qualified public safety employee’ means
22 any employee of a State or political subdivision
23 of a State who provides police protection, fire-
24 fighting services, or emergency medical services

1 for any area within the jurisdiction of such
2 State or political subdivision.”

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to distributions after the date of
5 the enactment of this Act.

6 **SEC. 1005. ALLOW ROLLOVERS BY NONSPOUSE BENE-**
7 **FICIARIES OF CERTAIN RETIREMENT PLAN**
8 **DISTRIBUTIONS.**

9 (a) IN GENERAL.—

10 (1) QUALIFIED PLANS.—Section 402(c) of the
11 Internal Revenue Code of 1986 (relating to rollovers
12 from exempt trusts) is amended by adding at the
13 end the following new paragraph:

14 “(11) DISTRIBUTIONS TO INHERITED INDI-
15 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-
16 FICIARY.—

17 “(A) IN GENERAL.—If, with respect to any
18 portion of a distribution from an eligible retire-
19 ment plan of a deceased employee, a direct
20 trustee-to-trustee transfer is made to an indi-
21 vidual retirement plan described in clause (i) or
22 (ii) of paragraph (8)(B) established for the pur-
23 poses of receiving the distribution on behalf of
24 an individual who is a designated beneficiary
25 (as defined by section 401(a)(9)(E)) of the em-

1 ployee and who is not the surviving spouse of
2 the employee—

3 “(i) the transfer shall be treated as an
4 eligible rollover distribution for purposes of
5 this subsection,

6 “(ii) the individual retirement plan
7 shall be treated as an inherited individual
8 retirement account or individual retirement
9 annuity (within the meaning of section
10 408(d)(3)(C)) for purposes of this title,
11 and

12 “(iii) section 401(a)(9)(B) (other than
13 clause (iv) thereof) shall apply to such
14 plan.

15 “(B) CERTAIN TRUSTS TREATED AS BENE-
16 FICIARIES.—For purposes of this paragraph, to
17 the extent provided in rules prescribed by the
18 Secretary, a trust maintained for the benefit of
19 one or more designated beneficiaries shall be
20 treated in the same manner as a designated
21 beneficiary.”

22 (2) SECTION 403(a) PLANS.—Subparagraph
23 (B) of section 403(a)(4) of such Code (relating to
24 rollover amounts) is amended by striking “and (9)”
25 and inserting “, (9), and (11)”.

1 (3) SECTION 403(b) PLANS.—Subparagraph
2 (B) of section 403(b)(8) of such Code (relating to
3 rollover amounts) is amended by striking “and (9)”
4 and inserting “, (9), and (11)”.

5 (4) SECTION 457 PLANS.—Subparagraph (B) of
6 section 457(e)(16) of such Code (relating to rollover
7 amounts) is amended by striking “and (9)” and in-
8 serting “, (9), and (11)”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to distributions after December 31,
11 2005.

12 **SEC. 1006. FASTER VESTING OF EMPLOYER NONELECTIVE**
13 **CONTRIBUTIONS.**

14 (a) AMENDMENTS TO THE INTERNAL REVENUE
15 CODE OF 1986.—

16 (1) IN GENERAL.—Paragraph (2) of section
17 411(a) of the Internal Revenue Code of 1986 (relat-
18 ing to employer contributions) is amended to read as
19 follows:

20 “(2) EMPLOYER CONTRIBUTIONS.—

21 “(A) DEFINED BENEFIT PLANS.—

22 “(i) IN GENERAL.—In the case of a
23 defined benefit plan, a plan satisfies the
24 requirements of this paragraph if it satis-
25 fies the requirements of clause (ii) or (iii).

1 “(ii) 5-YEAR VESTING.—A plan satis-
 2 fies the requirements of this clause if an
 3 employee who has completed at least 5
 4 years of service has a nonforfeitable right
 5 to 100 percent of the employee’s accrued
 6 benefit derived from employer contribu-
 7 tions.

8 “(iii) 3 TO 7 YEAR VESTING.—A plan
 9 satisfies the requirements of this clause if
 10 an employee has a nonforfeitable right to
 11 a percentage of the employee’s accrued
 12 benefit derived from employer contribu-
 13 tions determined under the following table:

“Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

14 “(B) DEFINED CONTRIBUTION PLANS.—

15 “(i) IN GENERAL.—In the case of a
 16 defined contribution plan, a plan satisfies
 17 the requirements of this paragraph if it
 18 satisfies the requirements of clause (ii) or
 19 (iii).

20 “(ii) 3-YEAR VESTING.—A plan satis-
 21 fies the requirements of this clause if an
 22 employee who has completed at least 3

1 years of service has a nonforfeitable right
 2 to 100 percent of the employee’s accrued
 3 benefit derived from employer contribu-
 4 tions.

5 “(iii) 2 TO 6 YEAR VESTING.—A plan
 6 satisfies the requirements of this clause if
 7 an employee has a nonforfeitable right to
 8 a percentage of the employee’s accrued
 9 benefit derived from employer contribu-
 10 tions determined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.”.

11 (2) CONFORMING AMENDMENT.—Section
 12 411(a) of such Code (relating to general rule for
 13 minimum vesting standards) is amended by striking
 14 paragraph (12).

15 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 16 INCOME SECURITY ACT OF 1974.—

17 (1) IN GENERAL.—Paragraph (2) of section
 18 203(a) of the Employee Retirement Income Security
 19 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to
 20 read as follows:

1 “(2)(A)(i) In the case of a defined benefit plan,
 2 a plan satisfies the requirements of this paragraph
 3 if it satisfies the requirements of clause (ii) or (iii).

4 “(ii) A plan satisfies the requirements of this
 5 clause if an employee who has completed at least 5
 6 years of service has a nonforfeitable right to 100
 7 percent of the employee’s accrued benefit derived
 8 from employer contributions.

9 “(iii) A plan satisfies the requirements of this
 10 clause if an employee has a nonforfeitable right to
 11 a percentage of the employee’s accrued benefit de-
 12 rived from employer contributions determined under
 13 the following table:

“Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

14 “(B)(i) In the case of an individual account
 15 plan, a plan satisfies the requirements of this para-
 16 graph if it satisfies the requirements of clause (ii) or
 17 (iii).

18 “(ii) A plan satisfies the requirements of this
 19 clause if an employee who has completed at least 3
 20 years of service has a nonforfeitable right to 100
 21 percent of the employee’s accrued benefit derived
 22 from employer contributions.

1 “(iii) A plan satisfies the requirements of this
 2 clause if an employee has a nonforfeitable right to
 3 a percentage of the employee’s accrued benefit de-
 4 rived from employer contributions determined under
 5 the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.”.

6 (2) CONFORMING AMENDMENT.—Section
 7 203(a) of such Act is amended by striking para-
 8 graph (4).

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—Except as provided in para-
 11 graphs (2) and (4), the amendments made by this
 12 section shall apply to contributions for plan years
 13 beginning after December 31, 2005.

14 (2) COLLECTIVE BARGAINING AGREEMENTS.—
 15 In the case of a plan maintained pursuant to one or
 16 more collective bargaining agreements between em-
 17 ployee representatives and one or more employers
 18 ratified before the date of the enactment of this Act,
 19 the amendments made by this section shall not apply
 20 to contributions on behalf of employees covered by
 21 any such agreement for plan years beginning before
 22 the earlier of—

1 (A) the later of—

2 (i) the date on which the last of such
3 collective bargaining agreements termi-
4 nates (determined without regard to any
5 extension thereof on or after such date of
6 the enactment); or

7 (ii) January 1, 2006; or

8 (B) January 1, 2008.

9 (3) SERVICE REQUIRED.—With respect to any
10 plan, the amendments made by this section shall not
11 apply to any employee before the date that such em-
12 ployee has 1 hour of service under such plan in any
13 plan year to which the amendments made by this
14 section apply.

15 (4) SPECIAL RULE FOR STOCK OWNERSHIP
16 PLANS.—Notwithstanding paragraph (1) or (2), in
17 the case of an employee stock ownership plan (as de-
18 fined in section 4975(e)(7) of the Internal Revenue
19 Code of 1986) which had outstanding on September
20 26, 2005, a loan incurred for the purpose of acquir-
21 ing qualifying employer securities (as defined in sec-
22 tion 4975(e)(8) of such Code), the amendments
23 made by this section shall not apply to any plan year
24 beginning before the earlier of—

1 (A) the date on which the loan is fully re-
2 paid, or

3 (B) the date on which the loan was, as of
4 September 26, 2005, scheduled to be fully re-
5 paid.

6 **SEC. 1007. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**
7 **PLANS TO ROTH IRAS.**

8 (a) IN GENERAL.—Subsection (e) of section 408A of
9 the Internal Revenue Code of 1986 (defining qualified roll-
10 over contribution) is amended to read as follows:

11 “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For
12 purposes of this section, the term ‘qualified rollover con-
13 tribution’ means a rollover contribution—

14 “(1) to a Roth IRA from another such account,

15 “(2) from an eligible retirement plan, but only
16 if—

17 “(A) in the case of an individual retire-
18 ment plan, such rollover contribution meets the
19 requirements of section 408(d)(3), and

20 “(B) in the case of any eligible retirement
21 plan (as defined in section 402(c)(8)(B) other
22 than clauses (i) and (ii) thereof), such rollover
23 contribution meets the requirements of section
24 402(c), 403(b)(8), or 457(e)(16), as applicable.

1 For purposes of section 408(d)(3)(B), there shall be dis-
2 regarded any qualified rollover contribution from an indi-
3 vidual retirement plan (other than a Roth IRA) to a Roth
4 IRA.”

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 408A(c)(3)(B) of such Code is
7 amended—

8 (A) in the text by striking “individual re-
9 tirement plan” and inserting “an eligible retire-
10 ment plan (as defined by section
11 402(c)(8)(B))”, and

12 (B) in the heading by striking “IRA” and
13 inserting “ELIGIBLE RETIREMENT PLAN”.

14 (2) Section 408A(d)(3) of such Code is
15 amended—

16 (A) in subparagraph (A), by striking “sec-
17 tion 408(d)(3)” inserting “sections 402(c),
18 403(b)(8), 408(d)(3), and 457(e)(16)”,

19 (B) in subparagraph (B), by striking “in-
20 dividual retirement plan” and inserting “eligible
21 retirement plan (as defined by section
22 402(c)(8)(B))”,

23 (C) in subparagraph (D), by inserting “or
24 6047” after “408(i)”,

1 (D) in subparagraph (D), by striking “or
2 both” and inserting “persons subject to section
3 6047(d)(1), or all of the foregoing persons”,
4 and

5 (E) in the heading, by striking “IRA” and
6 inserting “ELIGIBLE RETIREMENT PLAN”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to distributions after December 31,
9 2005.

10 **SEC. 1008. ELIMINATION OF HIGHER PENALTY ON CERTAIN**
11 **SIMPLE PLAN DISTRIBUTIONS.**

12 (a) IN GENERAL.—Subsection (t) of section 72 of the
13 Internal Revenue Code of 1986 (relating to 10-percent ad-
14 ditional tax on early distributions from qualified retire-
15 ment plans), as amended by section 1004, is amended by
16 striking paragraph (6) and redesignating paragraphs (7),
17 (8), (9), and (10) as paragraphs (6), (7), (8), and (9),
18 respectively.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 72(t)(2)(E) of such Code is amend-
21 ed by striking “paragraph (7)” and inserting “para-
22 graph (6)”.

23 (2) Section 72(t)(2)(F) of such Code is amend-
24 ed by striking “paragraph (8)” and inserting “para-
25 graph (7)”.

1 of having received a distribution under section 457(e)(9)
2 of the Internal Revenue Code of 1986, as in effect prior
3 to the enactment of the Small Business Job Protection
4 Act of 1996.

5 **SEC. 1011. TRANSFERS TO THE PBGC.**

6 (a) MANDATORY DISTRIBUTIONS TO PBGC.—Clause
7 (i) of section 401(a)(31)(B) of the Internal Revenue Code
8 of 1986 (relating to general rule for certain mandatory
9 distributions) is amended by inserting “to the Pension
10 Benefit Guaranty Corporation in accordance with section
11 4050(e) of the Employee Retirement Income Security Act
12 of 1974 or” after “such transfer”.

13 (b) TAX TREATMENT OF DISTRIBUTIONS.—Subpara-
14 graph (B) of section 401(a)(31) of such Code is amended
15 by adding at the end the following new clause:

16 “(iii) INCOME TAX TREATMENT OF
17 TRANSFERS TO PBGC.—For purposes of
18 determining the income tax treatment re-
19 lating to transfers to the Pension Benefit
20 Guaranty Corporation under clause (i)—

21 “(I) the transfer of amounts to
22 the Pension Benefit Guaranty Cor-
23 poration pursuant to clause (i) shall
24 be treated as a transfer to an indi-

1 “(B) in such other form as is specified in
2 regulations of the corporation.

3 “(2) INFORMATION TO THE CORPORATION.—To
4 the extent provided in regulations, the plan adminis-
5 trator of a plan described in paragraph (3) shall,
6 upon a transfer of benefits to the corporation under
7 section 401(a)(31)(B) of such Code, provide the cor-
8 poration information with respect to benefits of the
9 participant or beneficiary so transferred.

10 “(3) PLANS DESCRIBED.—A plan is described
11 in this paragraph if the plan is a pension plan (with-
12 in the meaning of section 3(2))—

13 “(A) which provides for mandatory dis-
14 tributions under section 401(a)(31)(B) of the
15 Internal Revenue Code of 1986, and

16 “(B) which is not a plan described in para-
17 graphs (2) through (11) of section 4021(b).

18 “(4) CERTAIN PROVISIONS NOT TO APPLY.—
19 Subsections (a)(1) and (a)(3) shall not apply to a
20 plan described in paragraph (3).

21 “(f) AUTHORITY TO CHARGE FEE.—The corporation
22 may charge a reasonable fee for costs incurred in connec-
23 tion with the transfer and management of amounts trans-
24 ferred to the corporation under this section. Such fee may

1 be imposed on the transferor and may be deducted from
2 amounts so transferred.”

3 (d) EFFECTIVE DATES.—

4 (1) INTERNAL REVENUE CODE PROVISIONS.—

5 The amendments made by subsections (a) and (b)
6 shall take effect as if included in the amendments
7 made by section 657 of the Economic Growth and
8 Tax Relief Reconciliation Act of 2001.

9 (2) EMPLOYEE RETIREMENT INCOME SECURITY
10 ACT OF 1974 PROVISIONS.—The amendments made
11 by subsection (c) shall apply to distributions made
12 after final regulations implementing subsections (e)
13 and (f) of section 4050 of the Employee Retirement
14 Income Security Act of 1974 (as added by sub-
15 section (c)) are prescribed.

16 (3) REGULATIONS.—The Pension Benefit Guar-
17 anty Corporation shall issue regulations necessary to
18 carry out the amendments made by subsection (c)
19 not later than December 31, 2006.

20 **SEC. 1012. MISSING PARTICIPANTS.**

21 (a) IN GENERAL.—Section 4050 of the Employee Re-
22 tirement Income Security Act of 1974 (29 U.S.C. 1350)
23 is amended by redesignating subsection (c) as subsection
24 (e) and by inserting after subsection (b) the following new
25 subsections:

1 “(c) MULTIEmployer PLANS.—The corporation
2 shall prescribe rules similar to the rules in subsection (a)
3 for multiemployer plans covered by this title that termi-
4 nate under section 4041A.

5 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

6 “(1) TRANSFER TO CORPORATION.—The plan
7 administrator of a plan described in paragraph (4)
8 may elect to transfer a missing participant’s benefits
9 to the corporation upon termination of the plan.

10 “(2) INFORMATION TO THE CORPORATION.—To
11 the extent provided in regulations, the plan adminis-
12 trator of a plan described in paragraph (4) shall,
13 upon termination of the plan, provide the corpora-
14 tion information with respect to benefits of a miss-
15 ing participant if the plan transfers such benefits—

16 “(A) to the corporation, or

17 “(B) to an entity other than the corpora-
18 tion or a plan described in paragraph (4)(B)(ii).

19 “(3) PAYMENT BY THE CORPORATION.—If ben-
20 efits of a missing participant were transferred to the
21 corporation under paragraph (1), the corporation
22 shall, upon location of the participant or beneficiary,
23 pay to the participant or beneficiary the amount
24 transferred (or the appropriate survivor benefit)
25 either—

1 “(A) in a single sum (plus interest), or

2 “(B) in such other form as is specified in
3 regulations of the corporation.

4 “(4) PLANS DESCRIBED.—A plan is described
5 in this paragraph if—

6 “(A) the plan is a pension plan (within the
7 meaning of section 3(2))—

8 “(i) to which the provisions of this
9 section do not apply (without regard to
10 this subsection), and

11 “(ii) which is not a plan described in
12 paragraphs (2) through (11) of section
13 4021(b), and

14 “(B) at the time the assets are to be dis-
15 tributed upon termination, the plan—

16 “(i) has missing participants, and

17 “(ii) has not provided for the transfer
18 of assets to pay the benefits of all missing
19 participants to another pension plan (with-
20 in the meaning of section 3(2)).

21 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
22 Subsections (a)(1) and (a)(3) shall not apply to a
23 plan described in paragraph (4).”

24 (b) CONFORMING AMENDMENTS.—Section 206(f) of
25 such Act (29 U.S.C. 1056(f)) is amended—

1 (1) by striking “title IV” and inserting “section
2 4050”; and

3 (2) by striking “the plan shall provide that,”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to distributions made after final
6 regulations implementing subsections (c) and (d) of sec-
7 tion 4050 of the Employee Retirement Income Security
8 Act of 1974 (as added by subsection (a)), respectively, are
9 prescribed.

10 **SEC. 1013. MODIFICATIONS OF RULES GOVERNING HARD-**
11 **SHIPS AND UNFORSEEN FINANCIAL EMER-**
12 **GENCIES.**

13 Within 180 days after the date of the enactment of
14 this Act, the Secretary of the Treasury shall modify the
15 rules for determining whether a participant has had a
16 hardship for purposes of section 401(k)(2)(B)(i)(IV) of
17 the Internal Revenue Code of 1986 to provide that if an
18 event (including the occurrence of a medical expense)
19 would constitute a hardship under the plan if it occurred
20 with respect to the participant’s spouse or dependent (as
21 defined in section 152 of such Code), such event shall, to
22 the extent permitted under a plan, constitute a hardship
23 if it occurs with respect to a person who is a beneficiary
24 under the plan with respect to the participant. The Sec-

1 retary of the Treasury shall issue similar rules for pur-
2 poses of determining whether a participant has had—

3 (1) a hardship for purposes of section
4 403(b)(11)(B) of such Code; or

5 (2) an unforeseen financial emergency for pur-
6 poses of sections 409A(a)(2)(A)(vi),
7 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such
8 Code.

9 **TITLE XI—ADMINISTRATIVE** 10 **PROVISIONS**

11 **SEC. 1101. EMPLOYEE PLANS COMPLIANCE RESOLUTION** 12 **SYSTEM.**

13 (a) IN GENERAL.—The Secretary of the Treasury
14 shall have full authority to establish and implement the
15 Employee Plans Compliance Resolution System (or any
16 successor program) and any other employee plans correc-
17 tion policies, including the authority to waive income, ex-
18 cise, or other taxes to ensure that any tax, penalty, or
19 sanction is not excessive and bears a reasonable relation-
20 ship to the nature, extent, and severity of the failure.

21 (b) IMPROVEMENTS.—The Secretary of the Treasury
22 shall continue to update and improve the Employee Plans
23 Compliance Resolution System (or any successor pro-
24 gram), giving special attention to—

1 (1) increasing the awareness and knowledge of
2 small employers concerning the availability and use
3 of the program;

4 (2) taking into account special concerns and
5 circumstances that small employers face with respect
6 to compliance and correction of compliance failures;

7 (3) extending the duration of the self-correction
8 period under the Self-Correction Program for signifi-
9 cant compliance failures;

10 (4) expanding the availability to correct insig-
11 nificant compliance failures under the Self-Correc-
12 tion Program during audit; and

13 (5) assuring that any tax, penalty, or sanction
14 that is imposed by reason of a compliance failure is
15 not excessive and bears a reasonable relationship to
16 the nature, extent, and severity of the failure.

17 **SEC. 1102. NOTICE AND CONSENT PERIOD REGARDING DIS-**
18 **TRIBUTIONS.**

19 (a) EXPANSION OF PERIOD.—

20 (1) AMENDMENT OF INTERNAL REVENUE
21 CODE.—

22 (A) IN GENERAL.—Section 417(a)(6)(A) of
23 the Internal Revenue Code of 1986 is amended
24 by striking “90-day” and inserting “180-day”.

1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the
3 regulations under sections 402(f), 411(a)(11),
4 and 417 of the Internal Revenue Code of 1986
5 by substituting “180 days” for “90 days” each
6 place it appears in Treasury Regulations sec-
7 tions 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-
8 1(b).

9 (2) AMENDMENT OF ERISA.—

10 (A) IN GENERAL.—Section 205(c)(7)(A) of
11 the Employee Retirement Income Security Act
12 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
13 by striking “90-day” and inserting “180-day”.

14 (B) MODIFICATION OF REGULATIONS.—
15 The Secretary of the Treasury shall modify the
16 regulations under part 2 of subtitle B of title
17 I of the Employee Retirement Income Security
18 Act of 1974 relating to sections 203(e) and 205
19 of such Act by substituting “180 days” for “90
20 days” each place it appears.

21 (3) EFFECTIVE DATE.—The amendments and
22 modifications made or required by this subsection
23 shall apply to years beginning after December 31,
24 2005.

25 (b) NOTIFICATION OF RIGHT TO DEFER.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall modify the regulations under section
3 411(a)(11) of the Internal Revenue Code of 1986
4 and under section 205 of the Employee Retirement
5 Income Security Act of 1974 to provide that the de-
6 scription of a participant’s right, if any, to defer re-
7 ceipt of a distribution shall also describe the con-
8 sequences of failing to defer such receipt.

9 (2) EFFECTIVE DATE.—

10 (A) IN GENERAL.—The modifications re-
11 quired by paragraph (1) shall apply to years be-
12 ginning after December 31, 2005.

13 (B) REASONABLE NOTICE.—A plan shall
14 not be treated as failing to meet the require-
15 ments of section 411(a)(11) of such Code or
16 section 205 of such Act with respect to any de-
17 scription of consequences described in para-
18 graph (1) made within 90 days after the Sec-
19 retary of the Treasury issues the modifications
20 required by paragraph (1) if the plan adminis-
21 trator makes a reasonable attempt to comply
22 with such requirements.

23 **SEC. 1103. REPORTING SIMPLIFICATION.**

24 (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
25 OWNERS AND THEIR SPOUSES.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall modify the requirements for filing annual
3 returns with respect to one-participant retirement
4 plans to ensure that such plans with assets of
5 \$250,000 or less as of the close of the plan year
6 need not file a return for that year.

7 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
8 FINED.—For purposes of this subsection, the term
9 “one-participant retirement plan” means a retire-
10 ment plan with respect to which the following re-
11 quirements are met:

12 (A) on the first day of the plan year—

13 (i) the plan covered only one indi-
14 vidual (or the individual and the individ-
15 ual’s spouse) and the individual owned 100
16 percent of the plan sponsor (whether or
17 not incorporated), or

18 (ii) the plan covered only one or more
19 partners (or partners and their spouses) in
20 the plan sponsor;

21 (B) the plan meets the minimum coverage
22 requirements of section 410(b) of the Internal
23 Revenue Code of 1986 without being combined
24 with any other plan of the business that covers
25 the employees of the business;

1 (C) the plan does not provide benefits to
2 anyone except the individual (and the individ-
3 ual's spouse) or the partners (and their
4 spouses);

5 (D) the plan does not cover a business that
6 is a member of an affiliated service group, a
7 controlled group of corporations, or a group of
8 businesses under common control; and

9 (E) the plan does not cover a business that
10 uses the services of leased employees (within
11 the meaning of section 414(n) of such Code).

12 For purposes of this paragraph, the term "partner"
13 includes a 2-percent shareholder (as defined in sec-
14 tion 1372(b) of such Code) of an S corporation.

15 (3) OTHER DEFINITIONS.—Terms used in para-
16 graph (2) which are also used in section 414 of the
17 Internal Revenue Code of 1986 shall have the re-
18 spective meanings given such terms by such section.

19 (4) EFFECTIVE DATE.—The provisions of this
20 subsection shall apply to plan years beginning on or
21 after January 1, 2006.

22 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
23 PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the
24 case of plan years beginning after December 31, 2006, the
25 Secretary of the Treasury and the Secretary of Labor shall

1 provide for the filing of a simplified annual return for any
2 retirement plan which covers less than 25 participants on
3 the first day of a plan year and which meets the require-
4 ments described in subparagraphs (B), (D), and (E) of
5 subsection (a)(2).

6 **SEC. 1104. VOLUNTARY EARLY RETIREMENT INCENTIVE**
7 **AND EMPLOYMENT RETENTION PLANS MAIN-**
8 **TAINED BY LOCAL EDUCATIONAL AGENCIES**
9 **AND OTHER ENTITIES.**

10 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE
11 PLANS.—

12 (1) TREATMENT AS PLAN PROVIDING SEVER-
13 ANCE PAY.—Section 457(e)(11) of the Internal Rev-
14 enue Code of 1986 (relating to certain plans ex-
15 cluded) is amended by adding at the end the fol-
16 lowing new subparagraph:

17 “(D) CERTAIN VOLUNTARY EARLY RETIRE-
18 MENT INCENTIVE PLANS.—

19 “(i) IN GENERAL.—If an applicable
20 voluntary early retirement incentive plan—

21 “(I) makes payments or supple-
22 ments as an early retirement benefit,
23 a retirement-type subsidy, or a benefit
24 described in the last sentence of sec-
25 tion 411(a)(9), and

1 “(II) such payments or supple-
2 ments are made in coordination with
3 a defined benefit plan which is de-
4 scribed in section 401(a) and includes
5 a trust exempt from tax under section
6 501(a) and which is maintained by an
7 eligible employer described in para-
8 graph (1)(A) or by an education asso-
9 ciation described in clause (ii)(II),
10 such applicable plan shall be treated for
11 purposes of subparagraph (A)(i) as a bona
12 fide severance pay plan with respect to
13 such payments or supplements to the ex-
14 tent such payments or supplements could
15 otherwise have been provided under such
16 defined benefit plan (determined as if sec-
17 tion 411 applied to such defined benefit
18 plan).

19 “(ii) APPLICABLE VOLUNTARY EARLY
20 RETIREMENT INCENTIVE PLAN.—For pur-
21 poses of this subparagraph, the term ‘ap-
22 plicable voluntary early retirement incen-
23 tive plan’ means a voluntary early retire-
24 ment incentive plan maintained by—

1 “(I) a local educational agency
2 (as defined in section 9101 of the Ele-
3 mentary and Secondary Education
4 Act of 1965 (20 U.S.C. 7801)), or

5 “(II) an education association
6 which principally represents employees
7 of 1 or more agencies described in
8 subclause (I) and which is described
9 in section 501(c) (5) or (6) and ex-
10 empt from tax under section 501(a).”

11 (2) AGE DISCRIMINATION IN EMPLOYMENT
12 ACT.—Section 4(l)(1) of the Age Discrimination in
13 Employment Act of 1967 (29 U.S.C. 623(l)(1)) is
14 amended—

15 (A) by inserting “(A)” after “(1)”,

16 (B) by redesignating subparagraphs (A)
17 and (B) as clauses (i) and (ii), respectively,

18 (C) by redesignating clauses (i) and (ii) of
19 subparagraph (B) (as in effect before the
20 amendments made by subparagraph (B)) as
21 subclauses (I) and (II), respectively, and

22 (D) by adding at the end the following:

23 “(B) A voluntary early retirement incentive
24 plan that—

25 “(i) is maintained by—

1 “(I) a local educational agency (as de-
2 fined in section 9101 of the Elementary
3 and Secondary Education Act of 1965 (20
4 U.S.C. 7801), or

5 “(II) an education association which
6 principally represents employees of 1 or
7 more agencies described in subclause (I)
8 and which is described in section 501(c)
9 (5) or (6) of the Internal Revenue Code of
10 1986 and exempt from taxation under sec-
11 tion 501(a) of such Code, and

12 “(ii) makes payments or supplements de-
13 scribed in subclauses (I) and (II) of subpara-
14 graph (A)(ii) in coordination with a defined
15 benefit plan (as so defined) maintained by an
16 eligible employer described in section
17 457(e)(1)(A) of such Code or by an education
18 association described in clause (i)(II),

19 shall be treated solely for purposes of subparagraph
20 (A)(ii) as if it were a part of the defined benefit plan
21 with respect to such payments or supplements. Pay-
22 ments or supplements under such a voluntary early
23 retirement incentive plan shall not constitute sever-
24 ance pay for purposes of section 4(l)(2) of the Age

1 Discrimination in Employment Act (29 U.S.C.
2 623(l)(2)).”

3 (b) EMPLOYMENT RETENTION PLANS.—

4 (1) IN GENERAL.—Section 457(f)(2) of the In-
5 ternal Revenue Code of 1986 (relating to exceptions)
6 is amended by striking “and” at the end of subpara-
7 graph (D), by striking the period at the end of sub-
8 paragraph (E) and inserting “, and”, and by adding
9 at the end the following:

10 “(F) that portion of any applicable employ-
11 ment retention plan described in paragraph (4)
12 with respect to any participant.”

13 (2) DEFINITIONS AND RULES RELATING TO EM-
14 PLOYMENT RETENTION PLANS.—Section 457(f) of
15 such Code is amended by adding at the end the fol-
16 lowing new paragraph:

17 “(4) EMPLOYMENT RETENTION PLANS.—For
18 purposes of paragraph (2)(F)—

19 “(A) IN GENERAL.—The portion of an ap-
20 plicable employment retention plan described in
21 this paragraph with respect to any participant
22 is that portion of the plan which provides bene-
23 fits payable to the participant not in excess of
24 twice the applicable dollar limit determined
25 under subsection (e)(15).

1 “(B) OTHER RULES.—

2 “(i) LIMITATION.—Paragraph (2)(F)
3 shall only apply to the portion of the plan
4 described in subparagraph (A) for years
5 preceding the year in which such portion is
6 paid or otherwise made available to the
7 participant.

8 “(ii) TREATMENT.—A plan shall not
9 be treated for purposes of this title as pro-
10 viding for the deferral of compensation for
11 any year with respect to the portion of the
12 plan described in subparagraph (A).

13 “(C) APPLICABLE EMPLOYMENT RETEN-
14 TION PLAN.—The term ‘applicable employment
15 retention plan’ means an employment retention
16 plan maintained by—

17 “(i) a local educational agency (as de-
18 fined in section 9101 of the Elementary
19 and Secondary Education Act of 1965 (20
20 U.S.C. 7801), or

21 “(ii) an education association which
22 principally represents employees of 1 or
23 more agencies described in clause (i) and
24 which is described in section 501(c) (5) or

1 (6) and exempt from taxation under sec-
2 tion 501(a).

3 “(D) EMPLOYMENT RETENTION PLAN.—

4 The term ‘employment retention plan’ means a
5 plan to pay, upon termination of employment,
6 compensation to an employee of a local edu-
7 cational agency or education association de-
8 scribed in subparagraph (C) for purposes of—

9 “(i) retaining the services of the em-
10 ployee, or

11 “(ii) rewarding such employee for the
12 employee’s service with 1 or more such
13 agencies or associations.”

14 (e) COORDINATION WITH ERISA.—Section 3(2)(B)
15 of the Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1002(2)(B)) is amended by adding at the end
17 the following: “An applicable voluntary early retirement
18 incentive plan (as defined in section 457(e)(11)(D)(ii) of
19 the Internal Revenue Code of 1986) making payments or
20 supplements described in section 457(e)(11)(D)(i) of such
21 Code, and an applicable employment retention plan (as de-
22 fined in section 457(f)(4)(C) of such Code) making pay-
23 ments of benefits described in section 457(f)(4)(A) of such
24 Code, shall, for purposes of this title, be treated as a wel-

1 fare plan (and not a pension plan) with respect to such
2 payments and supplements.”

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by
5 this Act shall take effect on the date of the enact-
6 ment of this Act.

7 (2) TAX AMENDMENTS.—The amendments
8 made by subsections (a)(1) and (b) shall apply to
9 taxable years ending after the date of the enactment
10 of this Act.

11 (3) ERISA AMENDMENTS.—The amendment
12 made by subsection (c) shall apply to plan years
13 ending after the date of the enactment of this Act.

14 (4) CONSTRUCTION.—Nothing in the amend-
15 ments made by this section shall alter or affect the
16 construction of the Internal Revenue Code of 1986,
17 the Employee Retirement Income Security Act of
18 1974, or the Age Discrimination in Employment Act
19 of 1967 as applied to any plan, arrangement, or con-
20 duct to which such amendments do not apply.

21 **SEC. 1105. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**
22 **TION AS A RESULT OF PENSION ROLLOVERS.**

23 (a) IN GENERAL.—Section 3304(a) of the Internal
24 Revenue Code of 1986 (relating to requirements for State

1 unemployment laws) is amended by adding at the end the
2 following new flush sentence:

3 “Compensation shall not be reduced under paragraph (15)
4 for any pension, retirement or retired pay, annuity, or
5 similar payment which is not includible in gross income
6 of the individual for the taxable year in which paid because
7 it was part of a rollover distribution.”

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to weeks beginning on or after the
10 date of the enactment of this Act.

11 **SEC. 1106. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**
12 **ERNMENTAL SECTION 457 PLANS.**

13 (a) IN GENERAL.—Section 641(f) of the Economic
14 Growth and Tax Relief Reconciliation Act of 2001 is
15 amended by adding at the end the following new para-
16 graph:

17 “(4) TRANSITION RULE FOR CERTAIN GOVERN-
18 MENTAL PLANS.—In the case of distributions from
19 an eligible deferred compensation plan of an em-
20 ployer described in section 457(e)(1)(A) of the Inter-
21 nal Revenue Code of 1986 which are made after De-
22 cember 31, 2001, and which are part of a series of
23 distributions which—

24 “(A) began before January 1, 2002, and

1 “(B) are payable for 10 years or less, the
2 Internal Revenue Code of 1986 may be applied
3 to such distributions without regard to the
4 amendments made by subsection (a)(1)(D).”

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect as if included in the provi-
7 sions of section 641 of the Economic Growth and Tax Re-
8 lief Reconciliation Act of 2001.

9 **SEC. 1107. TREATMENT OF DEFINED BENEFIT PLAN AS**
10 **GOVERNMENTAL PLAN.**

11 (a) IN GENERAL.—For purposes of the Internal Rev-
12 enue Code of 1986 and the Employee Retirement Income
13 Security Act of 1974, an eligible defined benefit plan shall
14 be treated as a governmental plan (within the meaning
15 of section 414(d) of such Code and section 3(32) of such
16 Act).

17 (b) ELIGIBLE DEFINED BENEFIT PLAN.—For pur-
18 poses of this section, an eligible defined benefit plan is
19 a defined benefit plan maintained by a nonprofit corpora-
20 tion which was—

21 (1) incorporated on September 16, 1998, under
22 a State nonprofit corporation statute; and

23 (2) organized for the express purpose of sup-
24 porting the missions and goals of a public corpora-
25 tion which—

1 (A) was created by a State statute effective
2 on July 1, 1995;

3 (B) is a governmental entity under State
4 law; and

5 (C) is a member of the nonprofit corpora-
6 tion.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to any year beginning before, on,
9 or after the date of the enactment of this Act.

10 **SEC. 1108. INCREASING PARTICIPATION IN CASH OR DE-**
11 **FERRED PLANS THROUGH AUTOMATIC CON-**
12 **TRIBUTION ARRANGEMENTS.**

13 (a) IN GENERAL.—Section 401(k) of the Internal
14 Revenue Code of 1986 (relating to cash or deferred ar-
15 rangement) is amended by adding at the end the following
16 new paragraph:

17 “(13) NONDISCRIMINATION REQUIREMENTS
18 FOR AUTOMATIC CONTRIBUTION TRUSTS.—

19 “(A) IN GENERAL.—A cash or deferred ar-
20 rangement shall be treated as meeting the re-
21 quirements of paragraph (3)(A)(ii) if such ar-
22 rangement constitutes an automatic contribu-
23 tion trust.

24 “(B) AUTOMATIC CONTRIBUTION TRUST.—

1 “(i) IN GENERAL.—For purposes of
2 this paragraph, the term ‘automatic con-
3 tribution trust’ means an arrangement—

4 “(I) except as provided in clauses
5 (ii) and (iii), under which each em-
6 ployee eligible to participate in the ar-
7 rangement is treated as having elected
8 to have the employer make elective
9 contributions in an amount equal to
10 the applicable percentage of the em-
11 ployee’s compensation, and

12 “(II) which meets the require-
13 ments of subparagraphs (C), (D), (E),
14 and (F).

15 “(ii) EXCEPTION FOR EXISTING EM-
16 PLOYEES.—In the case of any employee—

17 “(I) who was eligible to partici-
18 pate in the arrangement (or a prede-
19 cessor arrangement) immediately be-
20 fore the first date on which the ar-
21 rangement is an automatic contribu-
22 tion trust, and

23 “(II) whose rate of contribution
24 immediately before such first date was

1 less than the applicable percentage for
2 the employee,
3 clause (i)(I) shall not apply to such em-
4 ployee until the date which is 1 year after
5 such first date (or such earlier date as the
6 employee may elect).

7 “(iii) ELECTION OUT.—Each em-
8 ployee eligible to participate in the ar-
9 rangement may specifically elect not to
10 have contributions made under clause (i),
11 and such clause shall cease to apply to
12 compensation paid on or after the effective
13 date of the election.

14 “(iv) APPLICABLE PERCENTAGE.—
15 For purposes of this subparagraph—

16 “(I) IN GENERAL.—The term
17 ‘applicable percentage’ means, with
18 respect to any employee, the uniform
19 percentage (not less than 3 percent)
20 determined under the arrangement. In
21 the case of an employee who was eligi-
22 ble to participate in the arrangement
23 (or a predecessor arrangement) imme-
24 diately before the first date on which
25 the arrangement is an automatic con-

1 tribution trust, the initial applicable
2 percentage shall in no event be less
3 than the percentage in effect with re-
4 spect to the employee under the ar-
5 rangement immediately before the em-
6 ployee first begins participation in the
7 automatic contribution trust.

8 “(II) INCREASE IN PERCENT-
9 AGE.—In the case of the second plan
10 year beginning after the first date on
11 which the election under clause (i)(I)
12 is in effect with respect to the em-
13 ployee and any succeeding plan year,
14 the applicable percentage shall be a
15 percentage (not greater than 10 per-
16 cent or such higher uniform percent-
17 age determined under the arrange-
18 ment) equal to the sum of the applica-
19 ble percentage for the employee as of
20 the close of the preceding plan year
21 plus 1 percentage point (or such high-
22 er percentage specified by the plan). A
23 plan may elect to provide that, in lieu
24 of any increase under the preceding
25 sentence, the increase in the applica-

1 ble percentage required under this
2 subclause shall occur after each in-
3 crease in compensation an employee
4 receives on or after the first day of
5 such second plan year and that the
6 applicable percentage after each such
7 increase in compensation shall be
8 equal to the applicable percentage for
9 the employee immediately before such
10 increase in compensation plus 1 per-
11 centage point (or such higher percent-
12 age specified by the plan).

13 “(C) MATCHING OR NONELECTIVE CON-
14 TRIBUTIONS.—

15 “(i) IN GENERAL.—The requirements
16 of this subparagraph are met if, under the
17 arrangement, the employer—

18 “(I) makes matching contribu-
19 tions on behalf of each employee who
20 is not a highly compensated employee
21 in an amount equal to 50 percent of
22 the elective contributions of the em-
23 ployee to the extent such elective con-
24 tributions do not exceed 7 percent of
25 compensation; or

1 “(II) is required, without regard
2 to whether the employee makes an
3 elective contribution or employee con-
4 tribution, to make a contribution to a
5 defined contribution plan on behalf of
6 each employee who is not a highly
7 compensated employee and who is eli-
8 gible to participate in the arrange-
9 ment in an amount equal to at least
10 3 percent of the employee’s compensa-
11 tion,

12 The rules of clauses (ii) and (iii) of para-
13 graph (12)(B) shall apply for purposes of
14 subclause (I). The rules of paragraph
15 (12)(E)(ii) shall apply for purposes of sub-
16 clauses (I) and (II).

17 “(ii) OTHER PLANS.—An arrange-
18 ment shall be treated as meeting the re-
19 quirements under clause (i) if any other
20 plan maintained by the employer meets
21 such requirements with respect to employ-
22 ees eligible under the arrangement.

23 “(D) NOTICE REQUIREMENTS.—

1 “(i) IN GENERAL.—The requirements
2 of this subparagraph are met if the re-
3 quirements of clauses (ii) and (iii) are met.

4 “(ii) REASONABLE PERIOD TO MAKE
5 ELECTION.—The requirements of this
6 clause are met if each employee to whom
7 subparagraph (B)(i) applies—

8 “(I) receives a notice explaining
9 the employee’s right under the ar-
10 rangement to elect not to have elective
11 contributions made on the employee’s
12 behalf, and how contributions made
13 under the arrangement will be in-
14 vested in the absence of any invest-
15 ment election by the employee, and

16 “(II) has a reasonable period of
17 time after receipt of such notice and
18 before the first elective contribution is
19 made to make such election.

20 “(iii) ANNUAL NOTICE OF RIGHTS
21 AND OBLIGATIONS.—The requirements of
22 this clause are met if each employee eligi-
23 ble to participate in the arrangement is,
24 within a reasonable period before any year
25 (or if the plan elects to change the applica-

1 ble percentage after any increase in com-
2 pensation, before the increase), given no-
3 tice of the employee's rights and obliga-
4 tions under the arrangement.

5 The requirements of clauses (i) and (ii) of para-
6 graph (12)(D) shall be met with respect to the
7 notices described in clauses (ii) and (iii) of this
8 subparagraph.

9 “(E) PARTICIPATION, WITHDRAWAL, AND
10 VESTING REQUIREMENTS.—The requirements
11 of this subparagraph are met if—

12 “(i) the arrangement requires that
13 each employee eligible to participate in the
14 arrangement (determined without regard
15 to any minimum service requirement other-
16 wise applicable under section 410(a) or the
17 plan) commences participation in the ar-
18 rangement no later than the 1st day of the
19 1st calendar quarter beginning after the
20 date on which employee first becomes so
21 eligible,

22 “(ii) the withdrawal requirements of
23 paragraph (2)(B) are met with respect to
24 all employer contributions (including
25 matching and elective contributions) taken

1 into account in determining whether the
2 arrangement meets the requirements of
3 subparagraph (C), and

4 “(iii) the arrangement requires that
5 an employee’s right to the accrued benefit
6 derived from employer contributions de-
7 scribed in clause (ii) (other than elective
8 contributions) is nonforfeitable after the
9 employee has completed at least 2 years of
10 service.

11 “(F) CERTAIN WITHDRAWALS MUST BE
12 ALLOWED.—Notwithstanding any other provi-
13 sion of this subsection, the requirements of this
14 subparagraph are met if the arrangement al-
15 lows employees to elect to make permissible
16 withdrawals in accordance with section
17 414(w).”

18 (b) MATCHING CONTRIBUTIONS.—Section 401(m) of
19 the Internal Revenue Code of 1986 (relating to non-
20 discrimination test for matching contributions and em-
21 ployee contributions) is amended by redesignating para-
22 graph (12) as paragraph (13) and by inserting after para-
23 graph (11) the following new paragraph:

24 “(12) ALTERNATE METHOD FOR AUTOMATIC
25 CONTRIBUTION TRUSTS.—A defined contribution

1 plan shall be treated as meeting the requirements of
2 paragraph (2) with respect to matching contribu-
3 tions if the plan—

4 “(A) meets the contribution requirements
5 of subparagraphs (B)(i) and (C) of subsection
6 (k)(13);

7 “(B) meets the notice requirements of sub-
8 paragraph (D) of subsection (k)(13); and

9 “(C) meets the requirements of paragraph
10 (11)(B) (ii) and (iii).”.

11 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY
12 PLANS.—

13 (1) ELECTIVE CONTRIBUTION RULE.—Clause
14 (i) of section 416(g)(4)(H) of the Internal Revenue
15 Code of 1986 is amended by inserting “or
16 401(k)(13)” after “section 401(k)(12)”.

17 (2) MATCHING CONTRIBUTION RULE.—Clause
18 (ii) of section 416(g)(4)(H) of such Code is amended
19 by inserting “or 401(m)(12)” after “section
20 401(m)(11)”.

21 (d) SECTION 403(b) CONTRACTS.—Paragraph (11) of
22 section 401(m) of the Internal Revenue Code of 1986 is
23 amended by adding at the end the following:

24 “(C) SECTION 403(b) CONTRACTS.—An
25 annuity contract under section 403(b) shall be

1 treated as meeting the requirements of para-
2 graph (2) with respect to matching contribu-
3 tions if such contract meets requirements simi-
4 lar to the requirements under subparagraph
5 (A).”.

6 (e) PREEMPTION OF CONFLICTING STATE REGULA-
7 TION.—Section 514 of the Employee Retirement Income
8 Security of 1974 (29 U.S.C. 1144) is amended by insert-
9 ing at the end the following new subsection:

10 “(e) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of this section, any law of a State shall be
13 superseded if it would directly or indirectly prohibit
14 or restrict the inclusion in any plan of an eligible
15 automatic contribution arrangement.

16 “(2) ELIGIBLE AUTOMATIC CONTRIBUTION AR-
17 RANGEMENT.—For purposes of this subsection, the
18 term ‘eligible automatic contribution arrangement’
19 means an arrangement—

20 “(A) under which a participant may elect
21 to have the employer make payments as con-
22 tributions under the plan on behalf of the par-
23 ticipant, or to the participant directly in cash,

24 “(B) under which the participant is treated
25 as having elected to have the employer make

1 such contributions in an amount equal to a uni-
2 form percentage of compensation provided
3 under the plan until the participant specifically
4 elects not to have such contributions made (or
5 specifically elects to have such contributions
6 made at a different percentage),

7 “(C) under which contributions described
8 in subparagraph (B) are invested in accordance
9 with regulations prescribed by the Secretary
10 under section 404(c)(4), and

11 “(D) which meets the requirements of
12 paragraph (3).

13 “(3) NOTICE REQUIREMENTS.—

14 “(A) IN GENERAL.—The administrator of
15 an individual account plan shall, within a rea-
16 sonable period before each plan year, give to
17 each employee to whom an arrangement de-
18 scribed in paragraph (2) applies for such plan
19 year notice of the employee’s rights and obliga-
20 tions under the arrangement which—

21 “(i) is sufficiently accurate and com-
22 prehensive to apprise the employee of such
23 rights and obligations, and

1 “(ii) is written in a manner calculated
2 to be understood by the average employee
3 to whom the arrangement applies.

4 “(B) TIME AND FORM OF NOTICE.—A no-
5 tice shall not be treated as meeting the require-
6 ments of subparagraph (A) with respect to an
7 employee unless—

8 “(i) the notice includes a notice ex-
9 plaining the employee’s right under the ar-
10 rangement to elect not to have elective con-
11 tributions made on the employee’s behalf
12 (or to elect to have such contributions
13 made at a different percentage),

14 “(ii) the employee has a reasonable
15 period of time after receipt of the notice
16 described in clause (i) and before the first
17 elective contribution is made to make such
18 election, and

19 “(iii) the notice explains how contribu-
20 tions made under the arrangement will be
21 invested in the absence of any investment
22 election by the employee.”.

23 (f) TREATMENT OF WITHDRAWALS OF CONTRIBU-
24 TIONS DURING FIRST 60 DAYS.—Section 414 of the In-

1 ternal Revenue Code of 1986 is amended by adding at the
2 end the following new subsection:

3 “(w) SPECIAL RULES FOR CERTAIN WITHDRAWALS
4 FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGE-
5 MENTS.—

6 “(1) IN GENERAL.—If an eligible automatic
7 contribution arrangement allows an employee to
8 elect to make permissible withdrawals—

9 “(A) the amount of any such withdrawal
10 shall be includible in the gross income of the
11 employee for the taxable year of the employee
12 in which the distribution is made,

13 “(B) no tax shall be imposed under section
14 72(t) with respect to the distribution, and

15 “(C) the arrangement shall not be treated
16 as violating any restriction on distributions
17 under this title solely by reason of allowing the
18 withdrawal.

19 In the case of any distribution to an employee by
20 reason of an election under this paragraph, employer
21 matching contributions shall be forfeited or subject
22 to such other treatment as the Secretary may pre-
23 scribe.

24 “(2) PERMISSIBLE WITHDRAWAL.—For pur-
25 poses of this subsection—

1 “(A) IN GENERAL.—The term ‘permissible
2 withdrawal’ means any withdrawal from an eli-
3 gible automatic contribution arrangement meet-
4 ing the requirements of this paragraph which—

5 “(i) is made pursuant to an election
6 by an employee, and

7 “(ii) consists of elective contributions
8 described in paragraph (3)(B) (and earn-
9 ings attributable thereto).

10 “(B) TIME FOR MAKING ELECTION.—Sub-
11 paragraph (A) shall not apply to an election by
12 an employee unless the election is made no later
13 than the date which is 60 days after the date
14 of the first elective contribution with respect to
15 the employee under the arrangement.

16 “(C) AMOUNT OF DISTRIBUTION.—Sub-
17 paragraph (A) shall not apply to any election by
18 an employee unless the amount of any distribu-
19 tion by reason of the election is equal to the
20 amount of elective contributions made with re-
21 spect to the first payroll period to which the eli-
22 gible automatic contribution arrangement ap-
23 plies to the employee and any succeeding pay-
24 roll period beginning before the effective date of
25 the election (and earnings attributable thereto).

1 “(3) ELIGIBLE AUTOMATIC CONTRIBUTION AR-
2 RANGEMENT.—For purposes of this subsection, the
3 term ‘eligible automatic contribution arrangement’
4 means an arrangement—

5 “(A) under which a participant may elect
6 to have the employer make payments as con-
7 tributions under the plan on behalf of the par-
8 ticipant, or to the participant directly in cash,

9 “(B) under which the participant is treated
10 as having elected to have the employer make
11 such contributions in an amount equal to a uni-
12 form percentage of compensation provided
13 under the plan until the participant specifically
14 elects not to have such contributions made (or
15 specifically elects to have such contributions
16 made at a different percentage),

17 “(C) under which contributions described
18 in subparagraph (B) are invested in accordance
19 with regulations prescribed by the Secretary of
20 Labor under section 404(c)(4) of the Employee
21 Retirement Income Security Act of 1974, and

22 “(D) which meets the requirements of
23 paragraph (4).

24 “(4) NOTICE REQUIREMENTS.—

1 “(A) IN GENERAL.—The administrator of
2 a plan containing an arrangement described in
3 paragraph (3) shall, within a reasonable period
4 before each plan year, give to each employee to
5 whom an arrangement described in paragraph
6 (3) applies for such plan year notice of the em-
7 ployee’s rights and obligations under the ar-
8 rangement which—

9 “(i) is sufficiently accurate and com-
10 prehensive to apprise the employee of such
11 rights and obligations, and

12 “(ii) is written in a manner calculated
13 to be understood by the average employee
14 to whom the arrangement applies.

15 “(B) TIME AND FORM OF NOTICE.—A no-
16 tice shall not be treated as meeting the require-
17 ments of subparagraph (A) with respect to an
18 employee unless—

19 “(i) the notice includes a notice ex-
20 plaining the employee’s right under the ar-
21 rangement to elect not to have elective con-
22 tributions made on the employee’s behalf
23 (or to elect to have such contributions
24 made at a different percentage),

1 “(ii) the employee has a reasonable
2 period of time after receipt of the notice
3 described in clause (i) and before the first
4 elective contribution is made to make such
5 election, and

6 “(iii) the notice explains how contribu-
7 tions made under the arrangement will be
8 invested in the absence of any investment
9 election by the employee.”.

10 (g) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided by para-
12 graph (2), the amendments made by this section
13 shall apply to plan years beginning after December
14 31, 2005.

15 (2) SECTION 403(b) CONTRACTS.—The amend-
16 ments made by subsection (d) shall apply to years
17 ending after the date of the enactment of this Act.

18 **SEC. 1109. TREATMENT OF INVESTMENT OF ASSETS BY**
19 **PLAN WHERE PARTICIPANT FAILS TO EXER-**
20 **CISE INVESTMENT ELECTION.**

21 (a) IN GENERAL.—Section 404(c) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C.
23 1104(c)) is amended by adding at the end the following
24 new paragraph:

1 contributions and earnings will be in-
2 vested and explaining how, in the ab-
3 sence of any investment election by
4 the participant, such contributions
5 and earnings will be invested, and

6 “(II) has a reasonable period of
7 time after receipt of such notice and
8 before the beginning of the plan year
9 to make such designation.

10 “(ii) FORM OF NOTICE.—The require-
11 ments of clauses (i) and (ii) of section
12 401(k)(12)(D) of the Internal Revenue
13 Code of 1986 shall be met with respect to
14 the notices described in this subpara-
15 graph.”.

16 (b) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to plan years beginning after
19 December 31, 2005.

20 (2) REGULATIONS.—Final regulations under
21 section 404(c)(4)(A) of the Employee Retirement In-
22 come Security Act of 1974 (as added by this section)
23 shall be issued no later than 6 months after the date
24 of the enactment of this Act.

1 **SEC. 1110. CLARIFICATION OF FIDUCIARY RULES.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of the enactment of this Act, the Secretary of Labor
4 shall issue final regulations clarifying that the selection
5 of an annuity contract as an optional form of distribution
6 from an individual account plan to a participant or
7 beneficiary—

8 (1) is not subject to the safest available annuity
9 standard under Interpretive Bulletin 95–1 (29
10 C.F.R. 2509.95–1), and

11 (2) is subject to all otherwise applicable fidu-
12 ciary standards.

13 (b) EFFECTIVE DATE.—This section shall take effect
14 on the date of enactment of this Act.

15 **TITLE XII—UNITED STATES TAX**
16 **COURT MODERNIZATION**

17 **SEC. 1200. AMENDMENT OF 1986 CODE.**

18 Except as otherwise expressly provided, whenever in
19 this title an amendment or repeal is expressed in terms
20 of an amendment to, or repeal of, a section or other provi-
21 sion, the reference shall be considered to be made to a
22 section or other provision of the Internal Revenue Code
23 of 1986.

1 **SEC. 1201. ANNUITIES FOR SURVIVORS OF TAX COURT**
2 **JUDGES WHO ARE ASSASSINATED.**

3 (a) **ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-**
4 **TION.**—Subsection (h) of section 7448 (relating to annu-
5 ities to surviving spouses and dependent children of
6 judges) is amended to read as follows:

7 “(h) **ENTITLEMENT TO ANNUITY.**—

8 “(1) **IN GENERAL.**—

9 “(A) **ANNUITY TO SURVIVING SPOUSE.**—If
10 a judge described in paragraph (2) is survived
11 by a surviving spouse but not by a dependent
12 child, there shall be paid to such surviving
13 spouse an annuity beginning with the day of the
14 death of the judge or following the surviving
15 spouse’s attainment of the age of 50 years,
16 whichever is the later, in an amount computed
17 as provided in subsection (m).

18 “(B) **ANNUITY TO CHILD.**—If such a judge
19 is survived by a surviving spouse and a depend-
20 ent child or children, there shall be paid to such
21 surviving spouse an immediate annuity in an
22 amount computed as provided in subsection
23 (m), and there shall also be paid to or on behalf
24 of each such child an immediate annuity equal
25 to the lesser of—

1 “(i) 10 percent of the average annual
2 salary of such judge (determined in accord-
3 ance with subsection (m)), or

4 “(ii) 20 percent of such average an-
5 nual salary, divided by the number of such
6 children.

7 “(C) ANNUITY TO SURVIVING DEPENDENT
8 CHILDREN.—If such a judge leaves no surviving
9 spouse but leaves a surviving dependent child or
10 children, there shall be paid to or on behalf of
11 each such child an immediate annuity equal to
12 the lesser of—

13 “(i) 20 percent of the average annual
14 salary of such judge (determined in accord-
15 ance with subsection (m)), or

16 “(ii) 40 percent of such average an-
17 nual salary, divided by the number of such
18 children.

19 “(2) COVERED JUDGES.—Paragraph (1) applies
20 to any judge electing under subsection (b)—

21 “(A) who dies while a judge after having
22 rendered at least 5 years of civilian service com-
23 puted as prescribed in subsection (n), for the
24 last 5 years of which the salary deductions pro-
25 vided for by subsection (c)(1) or the deposits

1 required by subsection (d) have actually been
2 made or the salary deductions required by the
3 civil service retirement laws have actually been
4 made, or

5 “(B) who dies by assassination after hav-
6 ing rendered less than 5 years of civilian service
7 computed as prescribed in subsection (n) if, for
8 the period of such service, the salary deductions
9 provided for by subsection (c)(1) or the deposits
10 required by subsection (d) have actually been
11 made.

12 “(3) TERMINATION OF ANNUITY.—

13 “(A) IN THE CASE OF A SURVIVING
14 SPOUSE.—The annuity payable to a surviving
15 spouse under this subsection shall be terminable
16 upon such surviving spouse’s death or such sur-
17 viving spouse’s remarriage before attaining age
18 55.

19 “(B) IN THE CASE OF A CHILD.—The an-
20 nuity payable to a child under this subsection
21 shall be terminable upon (i) the child attaining
22 the age of 18 years, (ii) the child’s marriage, or
23 (iii) the child’s death, whichever first occurs, ex-
24 cept that if such child is incapable of self-sup-
25 port by reason of mental or physical disability

1 the child's annuity shall be terminable only
2 upon death, marriage, or recovery from such
3 disability.

4 “(C) IN THE CASE OF A DEPENDENT
5 CHILD AFTER DEATH OF SURVIVING SPOUSE.—
6 In case of the death of a surviving spouse of a
7 judge leaving a dependent child or children of
8 the judge surviving such spouse, the annuity of
9 such child or children shall be recomputed and
10 paid as provided in paragraph (1)(C).

11 “(D) RECOMPUTATION.—In any case in
12 which the annuity of a dependent child is termi-
13 nated under this subsection, the annuities of
14 any remaining dependent child or children,
15 based upon the service of the same judge, shall
16 be recomputed and paid as though the child
17 whose annuity was so terminated had not sur-
18 vived such judge.

19 “(4) SPECIAL RULE FOR ASSASSINATED
20 JUDGES.—In the case of a survivor or survivors of
21 a judge described in paragraph (2)(B), there shall be
22 deducted from the annuities otherwise payable under
23 this section an amount equal to—

24 “(A) the amount of salary deductions pro-
25 vided for by subsection (c)(1) that would have

1 been made if such deductions had been made
2 for 5 years of civilian service computed as pre-
3 scribed in subsection (n) before the judge's
4 death, reduced by

5 “(B) the amount of such salary deductions
6 that were actually made before the date of the
7 judge's death.”

8 (b) DEFINITION OF ASSASSINATION.—Section
9 7448(a) (relating to definitions) is amended by adding at
10 the end the following new paragraph:

11 “(8) The terms ‘assassinated’ and ‘assassina-
12 tion’ mean the killing of a judge that is motivated
13 by the performance by that judge of his or her offi-
14 cial duties.”

15 (c) DETERMINATION OF ASSASSINATION.—Sub-
16 section (i) of section 7448 is amended—

17 (1) by striking the subsection heading and in-
18 serting the following:

19 “(i) DETERMINATIONS BY CHIEF JUDGE.—

20 “(1) DEPENDENCY AND DISABILITY.—”,

21 (2) by moving the text 2 ems to the right, and

22 (3) by adding at the end the following new
23 paragraph:

24 “(2) ASSASSINATION.—The chief judge shall
25 determine whether the killing of a judge was an as-

1 sassination, subject to review only by the Tax Court.
2 The head of any Federal agency that investigates
3 the killing of a judge shall provide information to
4 the chief judge that would assist the chief judge in
5 making such a determination.”

6 (d) COMPUTATION OF ANNUITIES.—Subsection (m)
7 of section 7448 is amended—

8 (1) by striking the subsection heading and in-
9 serting the following:

10 “(m) COMPUTATION OF ANNUITIES.—

11 “(1) IN GENERAL.—”,

12 (2) by moving the text 2 ems to the right, and

13 (3) by adding at the end the following new
14 paragraph:

15 “(2) ASSASSINATED JUDGES.—In the case of a
16 judge who is assassinated and who has served less
17 than 3 years, the annuity of the surviving spouse of
18 such judge shall be based upon the average annual
19 salary received by such judge for judicial service.”

20 (e) OTHER BENEFITS.—Section 7448 is amended by
21 adding at the end the following:

22 “(u) OTHER BENEFITS.—In the case of a judge who
23 is assassinated, an annuity shall be paid under this section
24 notwithstanding a survivor’s eligibility for or receipt of
25 benefits under chapter 81 of title 5, United States Code,

1 except that the annuity for which a surviving spouse is
2 eligible under this section shall be reduced to the extent
3 that the total benefits paid under this section and chapter
4 81 of that title for any year would exceed the current sal-
5 ary for that year of the office of the judge.”

6 **SEC. 1202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**
7 **JUDICIAL SURVIVOR ANNUITIES.**

8 (a) **IN GENERAL.**—Subsection (s) of section 7448
9 (relating to annuities to surviving spouses and dependent
10 children of judges) is amended to read as follows:

11 “(s) **INCREASES IN SURVIVOR ANNUITIES.**—Each
12 time that an increase is made under section 8340(b) of
13 title 5, United States Code, in annuities payable under
14 subchapter III of chapter 83 of that title, each annuity
15 payable from the survivors annuity fund under this section
16 shall be increased at the same time by the same percent-
17 age by which annuities are increased under such section
18 8340(b).”

19 (b) **EFFECTIVE DATE.**—The amendment made by
20 this section shall apply with respect to increases made
21 under section 8340(b) of title 5, United States Code, in
22 annuities payable under subchapter III of chapter 83 of
23 that title, taking effect after the date of the enactment
24 of this Act.

1 **SEC. 1203. LIFE INSURANCE COVERAGE FOR TAX COURT**
2 **JUDGES.**

3 (a) IN GENERAL.—Section 7447 (relating to retire-
4 ment of judges) is amended by adding at the end the fol-
5 lowing new subsection:

6 “(j) LIFE INSURANCE COVERAGE.—For purposes of
7 chapter 87 of title 5, United States Code (relating to life
8 insurance), any individual who is serving as a judge of
9 the Tax Court or who is retired under this section is
10 deemed to be an employee who is continuing in active em-
11 ployment.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to any individual serving as a judge
14 of the United States Tax Court or to any retired judge
15 of the United States Tax Court on the date of the enact-
16 ment of this Act.

17 **SEC. 1204. COST OF LIFE INSURANCE COVERAGE FOR TAX**
18 **COURT JUDGES AGE 65 OR OVER.**

19 Section 7472 (relating to expenditures) is amended
20 by inserting after the first sentence the following new sen-
21 tence: “Notwithstanding any other provision of law, the
22 Tax Court is authorized to pay on behalf of its judges,
23 age 65 or over, any increase in the cost of Federal Em-
24 ployees’ Group Life Insurance imposed after April 24,
25 1999, including any expenses generated by such payments,
26 as authorized by the chief judge in a manner consistent

1 with such payments authorized by the Judicial Conference
2 of the United States pursuant to section 604(a)(5) of title
3 28, United States Code.”

4 **SEC. 1205. MODIFICATION OF TIMING OF LUMP-SUM PAY-**
5 **MENT OF JUDGES’ ACCRUED ANNUAL LEAVE.**

6 (a) IN GENERAL.—Section 7443 (relating to mem-
7 bership of the Tax Court) is amended by adding at the
8 end the following new subsection:

9 “(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED
10 ANNUAL LEAVE.—Notwithstanding the provisions of sec-
11 tions 5551 and 6301 of title 5, United States Code, when
12 an individual subject to the leave system provided in chap-
13 ter 63 of that title is appointed by the President to be
14 a judge of the Tax Court, the individual shall be entitled
15 to receive, upon appointment to the Tax Court, a lump-
16 sum payment from the Tax Court of the accumulated and
17 accrued current annual leave standing to the individual’s
18 credit as certified by the agency from which the individual
19 resigned.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to any judge of the United States
22 Tax Court who has an outstanding leave balance on the
23 date of the enactment of this Act and to any individual
24 appointed by the President to serve as a judge of the
25 United States Tax Court after such date.

1 **SEC. 1206. PARTICIPATION OF TAX COURT JUDGES IN THE**
2 **THRIFT SAVINGS PLAN.**

3 (a) IN GENERAL.—Section 7447 (relating to retire-
4 ment of judges), as amended by this Act, is amended by
5 adding at the end the following new subsection:

6 “(k) THRIFT SAVINGS PLAN.—

7 “(1) ELECTION TO CONTRIBUTE.—

8 “(A) IN GENERAL.—A judge of the Tax
9 Court may elect to contribute to the Thrift Sav-
10 ings Fund established by section 8437 of title
11 5, United States Code.

12 “(B) PERIOD OF ELECTION.—An election
13 may be made under this paragraph only during
14 a period provided under section 8432(b) of title
15 5, United States Code, for individuals subject to
16 chapter 84 of such title.

17 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—
18 Except as otherwise provided in this subsection, the
19 provisions of subchapters III and VII of chapter 84
20 of title 5, United States Code, shall apply with re-
21 spect to a judge who makes an election under para-
22 graph (1).

23 “(3) SPECIAL RULES.—

24 “(A) AMOUNT CONTRIBUTED.—The
25 amount contributed by a judge to the Thrift
26 Savings Fund in any pay period shall not ex-

1 ceed the maximum percentage of such judge's
2 basic pay for such period as allowable under
3 section 8440f of title 5, United States Code.
4 Basic pay does not include any retired pay paid
5 pursuant to this section.

6 “(B) CONTRIBUTIONS FOR BENEFIT OF
7 JUDGE.—No contributions may be made for the
8 benefit of a judge under section 8432(c) of title
9 5, United States Code.

10 “(C) APPLICABILITY OF SECTION 8433(b)
11 OF TITLE 5 WHETHER OR NOT JUDGE RE-
12 TIRES.—Section 8433(b) of title 5, United
13 States Code, applies with respect to a judge
14 who makes an election under paragraph (1) and
15 who either—

16 “(i) retires under subsection (b), or

17 “(ii) ceases to serve as a judge of the
18 Tax Court but does not retire under sub-
19 section (b).

20 Retirement under subsection (b) is a separation
21 from service for purposes of subchapters III
22 and VII of chapter 84 of that title.

23 “(D) APPLICABILITY OF SECTION
24 8351(b)(5) OF TITLE 5.—The provisions of sec-
25 tion 8351(b)(5) of title 5, United States Code,

1 shall apply with respect to a judge who makes
2 an election under paragraph (1).

3 “(E) EXCEPTION.—Notwithstanding sub-
4 paragraph (C), if any judge retires under this
5 section, or resigns without having met the age
6 and service requirements set forth under sub-
7 section (b)(2), and such judge’s nonforfeitable
8 account balance is less than an amount that the
9 Executive Director of the Office of Personnel
10 Management prescribes by regulation, the Exec-
11 utive Director shall pay the nonforfeitable ac-
12 count balance to the participant in a single pay-
13 ment.”

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall take effect on the date of the enactment
16 of this Act, except that United States Tax Court judges
17 may only begin to participate in the Thrift Savings Plan
18 at the next open season beginning after such date.

19 **SEC. 1207. EXEMPTION OF TEACHING COMPENSATION OF**
20 **RETIRED JUDGES FROM LIMITATION ON**
21 **OUTSIDE EARNED INCOME.**

22 (a) IN GENERAL.—Section 7447 (relating to retire-
23 ment of judges), as amended by this Act, is amended by
24 adding at the end the following new subsection:

1 “(1) TEACHING COMPENSATION OF RETIRED
2 JUDGES.—For purposes of the limitation under section
3 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.
4 App.), any compensation for teaching approved under sec-
5 tion 502(a)(5) of such Act shall not be treated as outside
6 earned income when received by a judge of the Tax Court
7 who has retired under subsection (b) for teaching per-
8 formed during any calendar year for which such a judge
9 has met the requirements of subsection (c), as certified
10 by the chief judge of the Tax Court.”

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to any individual serving as a re-
13 tired judge of the United States Tax Court on or after
14 the date of the enactment of this Act.

15 **SEC. 1208. GENERAL PROVISIONS RELATING TO MAG-**
16 **ISTRATE JUDGES OF THE TAX COURT.**

17 (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO
18 MAGISTRATE JUDGE OF THE TAX COURT.—The heading
19 of section 7443A is amended to read as follows:

20 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

21 (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-
22 section (a) of section 7443A is amended to read as follows:

23 “(a) APPOINTMENT, TENURE, AND REMOVAL.—

24 “(1) APPOINTMENT.—The chief judge may,
25 from time to time, appoint and reappoint magistrate

1 judges of the Tax Court for a term of 8 years. The
2 magistrate judges of the Tax Court shall proceed
3 under such rules as may be promulgated by the Tax
4 Court.

5 “(2) REMOVAL.—Removal of a magistrate
6 judge of the Tax Court during the term for which
7 he or she is appointed shall be only for incom-
8 petency, misconduct, neglect of duty, or physical or
9 mental disability, but the office of a magistrate
10 judge of the Tax Court shall be terminated if the
11 judges of the Tax Court determine that the services
12 performed by the magistrate judge of the Tax Court
13 are no longer needed. Removal shall not occur unless
14 a majority of all the judges of the Tax Court concur
15 in the order of removal. Before any order of removal
16 shall be entered, a full specification of the charges
17 shall be furnished to the magistrate judge of the Tax
18 Court, and he or she shall be accorded by the judges
19 of the Tax Court an opportunity to be heard on the
20 charges.”

21 (c) SALARY.—Section 7443A(d) (relating to salary)
22 is amended by striking “90” and inserting “92”.

23 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-
24 SIONS.—Section 7443A is amended by adding at the end
25 the following new subsection:

1 “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-
2 SIONS.—

3 “(1) IN GENERAL.—A magistrate judge of the
4 Tax Court appointed under this section shall be ex-
5 empt from the provisions of subchapter I of chapter
6 63 of title 5, United States Code.

7 “(2) TREATMENT OF UNUSED LEAVE.—

8 “(A) AFTER SERVICE AS MAGISTRATE
9 JUDGE.—If an individual who is exempted
10 under paragraph (1) from the subchapter re-
11 ferred to in such paragraph was previously sub-
12 ject to such subchapter and, without a break in
13 service, again becomes subject to such sub-
14 chapter on completion of the individual’s service
15 as a magistrate judge, the unused annual leave
16 and sick leave standing to the individual’s cred-
17 it when such individual was exempted from this
18 subchapter is deemed to have remained to the
19 individual’s credit.

20 “(B) COMPUTATION OF ANNUITY.—In
21 computing an annuity under section 8339 of
22 title 5, United States Code, the total service of
23 an individual specified in subparagraph (A) who
24 retires on an immediate annuity or dies leaving
25 a survivor or survivors entitled to an annuity

1 includes, without regard to the limitations im-
2 posed by subsection (f) of such section 8339,
3 the days of unused sick leave standing to the
4 individual's credit when such individual was ex-
5 empted from subchapter I of chapter 63 of title
6 5, United States Code, except that these days
7 will not be counted in determining average pay
8 or annuity eligibility.

9 “(C) LUMP SUM PAYMENT.—Any accumu-
10 lated and current accrued annual leave or vaca-
11 tion balances credited to a magistrate judge as
12 of the date of the enactment of this subsection
13 shall be paid in a lump sum at the time of sepa-
14 ration from service pursuant to the provisions
15 and restrictions set forth in section 5551 of
16 title 5, United States Code, and related provi-
17 sions referred to in such section.”

18 (e) CONFORMING AMENDMENTS.—

19 (1) The heading of subsection (b) of section
20 7443A is amended by striking “SPECIAL TRIAL
21 JUDGES” and inserting “Magistrate Judges of the
22 Tax Court”.

23 (2) Section 7443A(b) is amended by striking
24 “special trial judges of the court” and inserting
25 “magistrate judges of the Tax Court”.

1 (3) Subsections (c) and (d) of section 7443A
2 are amended by striking “special trial judge” and
3 inserting “magistrate judge of the Tax Court” each
4 place it appears.

5 (4) Section 7443A(e) is amended by striking
6 “special trial judges” and inserting “magistrate
7 judges of the Tax Court”.

8 (5) Section 7456(a) is amended by striking
9 “special trial judge” each place it appears and in-
10 serting “magistrate judge”.

11 (6) Subsection (c) of section 7471 is
12 amended—

13 (A) by striking the subsection heading and
14 inserting “MAGISTRATE JUDGES OF THE TAX
15 COURT.—”, and

16 (B) by striking “special trial judges” and
17 inserting “magistrate judges”.

18 **SEC. 1209. ANNUITIES TO SURVIVING SPOUSES AND DE-**
19 **PENDENT CHILDREN OF MAGISTRATE**
20 **JUDGES OF THE TAX COURT.**

21 (a) DEFINITIONS.—Section 7448(a) (relating to defi-
22 nitions), as amended by this Act, is amended by redesignig-
23 nating paragraphs (5), (6), (7), and (8) as paragraphs (7),
24 (8), (9), and (10), respectively, and by inserting after
25 paragraph (4) the following new paragraphs:

1 “(5) The term ‘magistrate judge’ means a judi-
2 cial officer appointed pursuant to section 7443A, in-
3 cluding any individual receiving an annuity under
4 section 7443B, or chapters 83 or 84, as the case
5 may be, of title 5, United States Code, whether or
6 not performing judicial duties under section 7443C.

7 “(6) The term ‘magistrate judge’s salary’
8 means the salary of a magistrate judge received
9 under section 7443A(d), any amount received as an
10 annuity under section 7443B, or chapters 83 or 84,
11 as the case may be, of title 5, United States Code,
12 and compensation received under section 7443C.”

13 (b) ELECTION.—Subsection (b) of section 7448 (re-
14 lating to annuities to surviving spouses and dependent
15 children of judges) is amended—

16 (1) by striking the subsection heading and in-
17 serting the following:

18 “(b) ELECTION.—

19 “(1) JUDGES.—”,

20 (2) by moving the text 2 ems to the right, and

21 (3) by adding at the end the following new
22 paragraph:

23 “(2) MAGISTRATE JUDGES.—Any magistrate
24 judge may by written election filed with the chief
25 judge bring himself or herself within the purview of

1 this section. Such election shall be filed not later
2 than the later of 6 months after—

3 “(A) 6 months after the date of the enact-
4 ment of this paragraph,

5 “(B) the date the judge takes office, or

6 “(C) the date the judge marries.”

7 (c) CONFORMING AMENDMENTS.—

8 (1) The heading of section 7448 is amended by
9 inserting “**AND MAGISTRATE JUDGES**” after
10 “**JUDGES**”.

11 (2) The item relating to section 7448 in the
12 table of sections for part I of subchapter C of chap-
13 ter 76 is amended by inserting “and magistrate
14 judges” after “judges”.

15 (3) Subsections (c)(1), (d), (f), (g), (h), (j),
16 (m), (n), and (u) of section 7448, as amended by
17 this Act, are each amended—

18 (A) by inserting “or magistrate judge”
19 after “judge” each place it appears other than
20 in the phrase “chief judge”, and

21 (B) by inserting “or magistrate judge’s”
22 after “judge’s” each place it appears.

23 (4) Section 7448(c) is amended—

1 (A) in paragraph (1), by striking “Tax
2 Court judges” and inserting “Tax Court judi-
3 cial officers”,

4 (B) in paragraph (2)—

5 (i) in subparagraph (A), by inserting
6 “and section 7443A(d)” after “(a)(4)”,
7 and

8 (ii) in subparagraph (B), by striking
9 “subsection (a)(4)” and inserting “sub-
10 sections (a)(4) and (a)(6)”.

11 (5) Section 7448(g) is amended by inserting
12 “or section 7443B” after “section 7447” each place
13 it appears, and by inserting “or an annuity” after
14 “retired pay”.

15 (6) Section 7448(j)(1) is amended—

16 (A) in subparagraph (A), by striking
17 “service or retired” and inserting “service, re-
18 tired”, and by inserting “, or receiving any an-
19 nuity under section 7443B or chapters 83 or 84
20 of title 5, United States Code,” after “section
21 7447”, and

22 (B) in the last sentence, by striking “sub-
23 sections (a) (6) and (7)” and inserting “para-
24 graphs (8) and (9) of subsection (a)”.

1 (7) Section 7448(m)(1), as amended by this
2 Act, is amended—

3 (A) by inserting “or any annuity under
4 section 7443B or chapters 83 or 84 of title 5,
5 United States Code” after “7447(d)”, and

6 (B) by inserting “or 7443B(m)(1)(B) after
7 “7447(f)(4)”.

8 (8) Section 7448(n) is amended by inserting
9 “his years of service pursuant to any appointment
10 under section 7443A,” after “of the Tax Court,”.

11 (9) Section 3121(b)(5)(E) is amended by in-
12 serting “or magistrate judge” before “of the United
13 States Tax Court”.

14 (10) Section 210(a)(5)(E) of the Social Secu-
15 rity Act is amended by inserting “or magistrate
16 judge” before “of the United States Tax Court”.

17 **SEC. 1210. RETIREMENT AND ANNUITY PROGRAM.**

18 (a) RETIREMENT AND ANNUITY PROGRAM.—Part I
19 of subchapter C of chapter 76 is amended by inserting
20 after section 7443A the following new section:

21 **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**
22 **THE TAX COURT.**

23 “(a) RETIREMENT BASED ON YEARS OF SERVICE.—
24 A magistrate judge of the Tax Court to whom this section
25 applies and who retires from office after attaining the age

1 of 65 years and serving at least 14 years, whether continu-
2 ously or otherwise, as such magistrate judge shall, subject
3 to subsection (f), be entitled to receive, during the remain-
4 der of the magistrate judge's lifetime, an annuity equal
5 to the salary being received at the time the magistrate
6 judge leaves office.

7 “(b) RETIREMENT UPON FAILURE OF REAPPOINT-
8 MENT.—A magistrate judge of the Tax Court to whom
9 this section applies who is not reappointed following the
10 expiration of the term of office of such magistrate judge
11 and who retires upon the completion of the term shall,
12 subject to subsection (f), be entitled to receive, upon at-
13 taining the age of 65 years and during the remainder of
14 such magistrate judge's lifetime, an annuity equal to that
15 portion of the salary being received at the time the mag-
16 istrate judge leaves office which the aggregate number of
17 years of service, not to exceed 14, bears to 14, if—

18 “(1) such magistrate judge has served at least
19 1 full term as a magistrate judge, and

20 “(2) not earlier than 9 months before the date
21 on which the term of office of such magistrate judge
22 expires, and not later than 6 months before such
23 date, such magistrate judge notified the chief judge
24 of the Tax Court in writing that such magistrate

1 judge was willing to accept reappointment to the po-
2 sition in which such magistrate judge was serving.

3 “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate
4 judge of the Tax Court to whom this section applies and
5 who retires after serving at least 8 years, whether continu-
6 ously or otherwise, as such a magistrate judge shall, sub-
7 ject to subsection (f), be entitled to receive, upon attaining
8 the age of 65 years and during the remainder of the mag-
9 istrate judge’s lifetime, an annuity equal to that portion
10 of the salary being received at the time the magistrate
11 judge leaves office which the aggregate number of years
12 of service, not to exceed 14, bears to 14. Such annuity
13 shall be reduced by $\frac{1}{6}$ of 1 percent for each full month
14 such magistrate judge was under the age of 65 at the time
15 the magistrate judge left office, except that such reduction
16 shall not exceed 20 percent.

17 “(d) RETIREMENT FOR DISABILITY.—A magistrate
18 judge of the Tax Court to whom this section applies, who
19 has served at least 5 years, whether continuously or other-
20 wise, as such a magistrate judge and who retires or is re-
21 moved from office upon the sole ground of mental or phys-
22 ical disability shall, subject to subsection (f), be entitled
23 to receive, during the remainder of the magistrate judge’s
24 lifetime, an annuity equal to 40 percent of the salary being
25 received at the time of retirement or removal or, in the

1 case of a magistrate judge who has served for at least 10
2 years, an amount equal to that proportion of the salary
3 being received at the time of retirement or removal which
4 the aggregate number of years of service, not to exceed
5 14, bears to 14.

6 “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate
7 judge of the Tax Court who is entitled to an annuity under
8 this section is also entitled to a cost-of-living adjustment
9 in such annuity, calculated and payable in the same man-
10 ner as adjustments under section 8340(b) of title 5,
11 United States Code, except that any such annuity, as in-
12 creased under this subsection, may not exceed the salary
13 then payable for the position from which the magistrate
14 judge retired or was removed.

15 “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-
16 ITIES.—

17 “(1) IN GENERAL.—A magistrate judge of the
18 Tax Court shall be entitled to an annuity under this
19 section if the magistrate judge elects an annuity
20 under this section by notifying the chief judge of the
21 Tax Court not later than the later of—

22 “(A) 5 years after the magistrate judge of
23 the Tax Court begins judicial service, or

24 “(B) 5 years after the date of the enact-
25 ment of this subsection.

1 Such notice shall be given in accordance with proce-
2 dures prescribed by the Tax Court.

3 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—

4 A magistrate judge who elects to receive an annuity
5 under this section shall not be entitled to receive—

6 “(A) any annuity to which such magistrate
7 judge would otherwise have been entitled under
8 subchapter III of chapter 83, or under chapter
9 84 (except for subchapters III and VII), of title
10 5, United States Code, for service performed as
11 a magistrate or otherwise,

12 “(B) an annuity or salary in senior status
13 or retirement under section 371 or 372 of title
14 28, United States Code,

15 “(C) retired pay under section 7447, or

16 “(D) retired pay under section 7296 of
17 title 38, United States Code.

18 “(3) COORDINATION WITH TITLE 5.—A mag-
19 istrate judge of the Tax Court who elects to receive
20 an annuity under this section—

21 “(A) shall not be subject to deductions and
22 contributions otherwise required by section
23 8334(a) of title 5, United States Code,

1 “(B) shall be excluded from the operation
2 of chapter 84 (other than subchapters III and
3 VII) of such title 5, and

4 “(C) is entitled to a lump-sum credit under
5 section 8342(a) or 8424 of such title 5, as the
6 case may be.

7 “(g) CALCULATION OF SERVICE.—For purposes of
8 calculating an annuity under this section—

9 “(1) service as a magistrate judge of the Tax
10 Court to whom this section applies may be credited,
11 and

12 “(2) each month of service shall be credited as
13 $\frac{1}{12}$ of a year, and the fractional part of any month
14 shall not be credited.

15 “(h) COVERED POSITIONS AND SERVICE.—This sec-
16 tion applies to any magistrate judge of the Tax Court or
17 special trial judge of the Tax Court appointed under this
18 subchapter, but only with respect to service as such a mag-
19 istrate judge or special trial judge after a date not earlier
20 than $9\frac{1}{2}$ years before the date of the enactment of this
21 subsection.

22 “(i) PAYMENTS PURSUANT TO COURT ORDER.—

23 “(1) IN GENERAL.—Payments under this sec-
24 tion which would otherwise be made to a magistrate
25 judge of the Tax Court based upon his or her service

1 shall be paid (in whole or in part) by the chief judge
2 of the Tax Court to another person if and to the ex-
3 tent expressly provided for in the terms of any court
4 decree of divorce, annulment, or legal separation, or
5 the terms of any court order or court-approved prop-
6 erty settlement agreement incident to any court de-
7 cree of divorce, annulment, or legal separation. Any
8 payment under this paragraph to a person bars re-
9 covery by any other person.

10 “(2) REQUIREMENTS FOR PAYMENT.—Para-
11 graph (1) shall apply only to payments made by the
12 chief judge of the Tax Court after the date of re-
13 ceipt by the chief judge of written notice of such de-
14 cree, order, or agreement, and such additional infor-
15 mation as the chief judge may prescribe.

16 “(3) COURT DEFINED.—For purposes of this
17 subsection, the term ‘court’ means any court of any
18 State, the District of Columbia, the Commonwealth
19 of Puerto Rico, Guam, the Northern Mariana Is-
20 lands, or the Virgin Islands, and any Indian tribal
21 court or courts of Indian offense.

22 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-
23 ITS.—

24 “(1) DEDUCTIONS.—Beginning with the next
25 pay period after the chief judge of the Tax Court re-

1 ceives a notice under subsection (f) that a mag-
2 istrate judge of the Tax Court has elected an annu-
3 ity under this section, the chief judge shall deduct
4 and withhold 1 percent of the salary of such mag-
5 istrate judge. Amounts shall be so deducted and
6 withheld in a manner determined by the chief judge.
7 Amounts deducted and withheld under this sub-
8 section shall be deposited in the Treasury of the
9 United States to the credit of the Tax Court Judi-
10 cial Officers' Retirement Fund. Deductions under
11 this subsection from the salary of a magistrate judge
12 shall terminate upon the retirement of the mag-
13 istrate judge or upon completion of 14 years of serv-
14 ice for which contributions under this section have
15 been made, whether continuously or otherwise, as
16 calculated under subsection (g), whichever occurs
17 first.

18 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF
19 CLAIMS.—Each magistrate judge of the Tax Court
20 who makes an election under subsection (f) shall be
21 deemed to consent and agree to the deductions from
22 salary which are made under paragraph (1). Pay-
23 ment of such salary less such deductions (and any
24 deductions made under section 7448) is a full and
25 complete discharge and acquittance of all claims and

1 demands for all services rendered by such magistrate
2 judge during the period covered by such payment,
3 except the right to those benefits to which the mag-
4 istrate judge is entitled under this section (and sec-
5 tion 7448).

6 “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-
7 istrate judge of the Tax Court who makes an election
8 under subsection (f) may deposit, for service performed
9 before such election for which contributions may be made
10 under this section, an amount equal to 1 percent of the
11 salary received for that service. Credit for any period cov-
12 ered by that service may not be allowed for purposes of
13 an annuity under this section until a deposit under this
14 subsection has been made for that period.

15 “(l) INDIVIDUAL RETIREMENT RECORDS.—The
16 amounts deducted and withheld under subsection (j), and
17 the amounts deposited under subsection (k), shall be cred-
18 ited to individual accounts in the name of each magistrate
19 judge of the Tax Court from whom such amounts are re-
20 ceived, for credit to the Tax Court Judicial Officers’ Re-
21 tirement Fund.

22 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

23 “(1) 1-YEAR FORFEITURE FOR FAILURE TO
24 PERFORM JUDICIAL DUTIES.—Subject to paragraph
25 (3), any magistrate judge of the Tax Court who re-

1 tires under this section and who fails to perform ju-
2 dicial duties required of such individual by section
3 7443C shall forfeit all rights to an annuity under
4 this section for a 1-year period which begins on the
5 1st day on which such individual fails to perform
6 such duties.

7 “(2) PERMANENT FORFEITURE OF RETIRED
8 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES
9 PERFORMED.—Subject to paragraph (3), any mag-
10 istrate judge of the Tax Court who retires under this
11 section and who thereafter performs (or supervises
12 or directs the performance of) legal or accounting
13 services in the field of Federal taxation for the indi-
14 vidual’s client, the individual’s employer, or any of
15 such employer’s clients, shall forfeit all rights to an
16 annuity under this section for all periods beginning
17 on or after the first day on which the individual per-
18 forms (or supervises or directs the performance of)
19 such services. The preceding sentence shall not apply
20 to any civil office or employment under the Govern-
21 ment of the United States.

22 “(3) FORFEITURES NOT TO APPLY WHERE IN-
23 DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-
24 ITY.—

1 “(A) IN GENERAL.—If a magistrate judge
2 of the Tax Court makes an election under this
3 paragraph—

4 “(i) paragraphs (1) and (2) (and sec-
5 tion 7443C) shall not apply to such mag-
6 istrate judge beginning on the date such
7 election takes effect, and

8 “(ii) the annuity payable under this
9 section to such magistrate judge, for peri-
10 ods beginning on or after the date such
11 election takes effect, shall be equal to the
12 annuity to which such magistrate judge is
13 entitled on the day before such effective
14 date.

15 “(B) ELECTION REQUIREMENTS.—An elec-
16 tion under subparagraph (A)—

17 “(i) may be made by a magistrate
18 judge of the Tax Court eligible for retire-
19 ment under this section, and

20 “(ii) shall be filed with the chief judge
21 of the Tax Court.

22 Such an election, once it takes effect, shall be
23 irrevocable.

24 “(C) EFFECTIVE DATE OF ELECTION.—
25 Any election under subparagraph (A) shall take

1 effect on the first day of the first month fol-
2 lowing the month in which the election is made.

3 “(4) ACCEPTING OTHER EMPLOYMENT.—Any
4 magistrate judge of the Tax Court who retires under
5 this section and thereafter accepts compensation for
6 civil office or employment under the United States
7 Government (other than for the performance of
8 functions as a magistrate judge of the Tax Court
9 under section 7443C) shall forfeit all rights to an
10 annuity under this section for the period for which
11 such compensation is received. For purposes of this
12 paragraph, the term ‘compensation’ includes retired
13 pay or salary received in retired status.

14 “(n) LUMP-SUM PAYMENTS.—

15 “(1) ELIGIBILITY.—

16 “(A) IN GENERAL.—Subject to paragraph
17 (2), an individual who serves as a magistrate
18 judge of the Tax Court and—

19 “(i) who leaves office and is not re-
20 appointed as a magistrate judge of the Tax
21 Court for at least 31 consecutive days,

22 “(ii) who files an application with the
23 chief judge of the Tax Court for payment
24 of a lump-sum credit,

1 “(iii) is not serving as a magistrate
2 judge of the Tax Court at the time of fil-
3 ing of the application, and

4 “(iv) will not become eligible to re-
5 ceive an annuity under this section within
6 31 days after filing the application,
7 is entitled to be paid the lump-sum credit. Pay-
8 ment of the lump-sum credit voids all rights to
9 an annuity under this section based on the serv-
10 ice on which the lump-sum credit is based, until
11 that individual resumes office as a magistrate
12 judge of the Tax Court.

13 “(B) PAYMENT TO SURVIVORS.—Lump-
14 sum benefits authorized by subparagraphs (C),
15 (D), and (E) of this paragraph shall be paid to
16 the person or persons surviving the magistrate
17 judge of the Tax Court and alive on the date
18 title to the payment arises, in the order of prec-
19 edence set forth in subsection (o) of section 376
20 of title 28, United States Code, and in accord-
21 ance with the last 2 sentences of paragraph (1)
22 of that subsection. For purposes of the pre-
23 ceding sentence, the term ‘judicial official’ as
24 used in subsection (o) of such section 376 shall
25 be deemed to mean ‘magistrate judge of the

1 Tax Court' and the terms 'Administrative Of-
2 fice of the United States Courts' and 'Director
3 of the Administrative Office of the United
4 States Courts' shall be deemed to mean 'chief
5 judge of the Tax Court'.

6 “(C) PAYMENT UPON DEATH OF JUDGE
7 BEFORE RECEIPT OF ANNUITY.—If a mag-
8 istrate judge of the Tax Court dies before re-
9 ceiving an annuity under this section, the lump-
10 sum credit shall be paid.

11 “(D) PAYMENT OF ANNUITY REMAIN-
12 DER.—If all annuity rights under this section
13 based on the service of a deceased magistrate
14 judge of the Tax Court terminate before the
15 total annuity paid equals the lump-sum credit,
16 the difference shall be paid.

17 “(E) PAYMENT UPON DEATH OF JUDGE
18 DURING RECEIPT OF ANNUITY.—If a magistrate
19 judge of the Tax Court who is receiving an an-
20 nuity under this section dies, any accrued annu-
21 ity benefits remaining unpaid shall be paid.

22 “(F) PAYMENT UPON TERMINATION.—Any
23 accrued annuity benefits remaining unpaid on
24 the termination, except by death, of the annuity

1 of a magistrate judge of the Tax Court shall be
2 paid to that individual.

3 “(G) PAYMENT UPON ACCEPTING OTHER
4 EMPLOYMENT.—Subject to paragraph (2), a
5 magistrate judge of the Tax Court who forfeits
6 rights to an annuity under subsection (m)(4)
7 before the total annuity paid equals the lump-
8 sum credit shall be entitled to be paid the dif-
9 ference if the magistrate judge of the Tax
10 Court files an application with the chief judge
11 of the Tax Court for payment of that dif-
12 ference. A payment under this subparagraph
13 voids all rights to an annuity on which the pay-
14 ment is based.

15 “(2) SPOUSES AND FORMER SPOUSES.—

16 “(A) IN GENERAL.—Payment of the lump-
17 sum credit under paragraph (1)(A) or a pay-
18 ment under paragraph (1)(G)—

19 “(i) may be made only if any current
20 spouse and any former spouse of the mag-
21 istrate judge of the Tax Court are notified
22 of the magistrate judge’s application, and

23 “(ii) shall be subject to the terms of
24 a court decree of divorce, annulment, or
25 legal separation, or any court or court ap-

1 proved property settlement agreement inci-
2 dent to such decree, if—

3 “(I) the decree, order, or agree-
4 ment expressly relates to any portion
5 of the lump-sum credit or other pay-
6 ment involved, and

7 “(II) payment of the lump-sum
8 credit or other payment would extin-
9 guish entitlement of the magistrate
10 judge’s spouse or former spouse to
11 any portion of an annuity under sub-
12 section (i).

13 “(B) NOTIFICATION.—Notification of a
14 spouse or former spouse under this paragraph
15 shall be made in accordance with such proce-
16 dures as the chief judge of the Tax Court shall
17 prescribe. The chief judge may provide under
18 such procedures that subparagraph (A)(i) may
19 be waived with respect to a spouse or former
20 spouse if the magistrate judge establishes to the
21 satisfaction of the chief judge that the where-
22 abouts of such spouse or former spouse cannot
23 be determined.

24 “(C) RESOLUTION OF 2 OR MORE OR-
25 DERS.—The chief judge shall prescribe proce-

1 dures under which this paragraph shall be ap-
2 plied in any case in which the chief judge re-
3 ceives 2 or more orders or decrees described in
4 subparagraph (A).

5 “(3) DEFINITION.—For purposes of this sub-
6 section, the term ‘lump-sum credit’ means the
7 unrefunded amount consisting of—

8 “(A) retirement deductions made under
9 this section from the salary of a magistrate
10 judge of the Tax Court,

11 “(B) amounts deposited under subsection
12 (k) by a magistrate judge of the Tax Court cov-
13 ering earlier service, and

14 “(C) interest on the deductions and depos-
15 its which, for any calendar year, shall be equal
16 to the overall average yield to the Tax Court
17 Judicial Officers’ Retirement Fund during the
18 preceding fiscal year from all obligations pur-
19 chased by the Secretary during such fiscal year
20 under subsection (o); but does not include
21 interest—

22 “(i) if the service covered thereby ag-
23 gregates 1 year or less, or

24 “(ii) for the fractional part of a
25 month in the total service.

1 “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT
2 FUND.—

3 “(1) ESTABLISHMENT.—There is established in
4 the Treasury a fund which shall be known as the
5 ‘Tax Court Judicial Officers’ Retirement Fund’.
6 Amounts in the Fund are authorized to be appro-
7 priated for the payment of annuities, refunds, and
8 other payments under this section.

9 “(2) INVESTMENT OF FUND.—The Secretary
10 shall invest, in interest bearing securities of the
11 United States, such currently available portions of
12 the Tax Court Judicial Officers’ Retirement Fund as
13 are not immediately required for payments from the
14 Fund. The income derived from these investments
15 constitutes a part of the Fund.

16 “(3) UNFUNDED LIABILITY.—

17 “(A) IN GENERAL.—There are authorized
18 to be appropriated to the Tax Court Judicial
19 Officers’ Retirement Fund amounts required to
20 reduce to zero the unfunded liability of the
21 Fund.

22 “(B) UNFUNDED LIABILITY.—For pur-
23 poses of subparagraph (A), the term ‘unfunded
24 liability’ means the estimated excess, deter-
25 mined on an annual basis in accordance with

1 the provisions of section 9503 of title 31,
2 United States Code, of the present value of all
3 benefits payable from the Tax Court Judicial
4 Officers' Retirement Fund over the sum of—

5 “(i) the present value of deductions to
6 be withheld under this section from the fu-
7 ture basic pay of magistrate judges of the
8 Tax Court, plus

9 “(ii) the balance in the Fund as of the
10 date the unfunded liability is determined.

11 “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

12 “(1) ELECTION TO CONTRIBUTE.—

13 “(A) IN GENERAL.—A magistrate judge of
14 the Tax Court who elects to receive an annuity
15 under this section or under section 611 of the
16 Pension Security and Transparency Act of
17 2005 may elect to contribute an amount of such
18 individual's basic pay to the Thrift Savings
19 Fund established by section 8437 of title 5,
20 United States Code.

21 “(B) PERIOD OF ELECTION.—An election
22 may be made under this paragraph only during
23 a period provided under section 8432(b) of title
24 5, United States Code, for individuals subject to
25 chapter 84 of such title.

1 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

2 Except as otherwise provided in this subsection, the
3 provisions of subchapters III and VII of chapter 84
4 of title 5, United States Code, shall apply with re-
5 spect to a magistrate judge who makes an election
6 under paragraph (1).

7 “(3) SPECIAL RULES.—

8 “(A) AMOUNT CONTRIBUTED.—The
9 amount contributed by a magistrate judge to
10 the Thrift Savings Fund in any pay period shall
11 not exceed the maximum percentage of such
12 judge’s basic pay for such pay period as allow-
13 able under section 8440f of title 5, United
14 States Code.

15 “(B) CONTRIBUTIONS FOR BENEFIT OF
16 JUDGE.—No contributions may be made for the
17 benefit of a magistrate judge under section
18 8432(c) of title 5, United States Code.

19 “(C) APPLICABILITY OF SECTION 8433(b)
20 OF TITLE 5.—Section 8433(b) of title 5, United
21 States Code, applies with respect to a mag-
22 istrate judge who makes an election under para-
23 graph (1) and—

24 “(i) who retires entitled to an imme-
25 diate annuity under this section (including

1 a disability annuity under subsection (d) of
2 this section) or section 611 of the Pension
3 Security and Transparency Act of 2005,

4 “(ii) who retires before attaining age
5 65 but is entitled, upon attaining age 65,
6 to an annuity under this section or section
7 611 of the Pension Security and Trans-
8 parency Act of 2005, or

9 “(iii) who retires before becoming en-
10 titled to an immediate annuity, or an an-
11 nuity upon attaining age 65, under this
12 section or section 611 of the Pension Secu-
13 rity and Transparency Act of 2005.

14 “(D) SEPARATION FROM SERVICE.—With
15 respect to a magistrate judge to whom this sub-
16 section applies, retirement under this section or
17 section 611 of the Pension Security and Trans-
18 parency Act of 2005 is a separation from serv-
19 ice for purposes of subchapters III and VII of
20 chapter 84 of title 5, United States Code.

21 “(4) DEFINITIONS.—For purposes of this sub-
22 section, the terms ‘retirement’ and ‘retire’ include
23 removal from office under section 7443A(a)(2) on
24 the sole ground of mental or physical disability.

1 “(5) OFFSET.—In the case of a magistrate
2 judge who receives a distribution from the Thrift
3 Savings Fund and who later receives an annuity
4 under this section, that annuity shall be offset by an
5 amount equal to the amount which represents the
6 Government’s contribution to that person’s Thrift
7 Savings Account, without regard to earnings attrib-
8 utable to that amount. Where such an offset would
9 exceed 50 percent of the annuity to be received in
10 the first year, the offset may be divided equally over
11 the first 2 years in which that person receives the
12 annuity.

13 “(6) EXCEPTION.—Notwithstanding clauses (i)
14 and (ii) of paragraph (3)(C), if any magistrate judge
15 retires under circumstances making such magistrate
16 judge eligible to make an election under subsection
17 (b) of section 8433 of title 5, United States Code,
18 and such magistrate judge’s nonforfeitable account
19 balance is less than an amount that the Executive
20 Director of the Office of Personnel Management pre-
21 scribes by regulation, the Executive Director shall
22 pay the nonforfeitable account balance to the partici-
23 pant in a single payment.”

24 (b) CONFORMING AMENDMENT.—The table of sec-
25 tions for part I of subchapter C of chapter 76 is amended

1 by inserting after the item relating to section 7443A the
2 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax Court.”.

3 **SEC. 1211. INCUMBENT MAGISTRATE JUDGES OF THE TAX**
4 **COURT.**

5 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND
6 SECTION 7443B OF THE INTERNAL REVENUE CODE OF
7 1986.—A magistrate judge of the United States Tax
8 Court in active service on the date of the enactment of
9 this Act shall, subject to subsection (b), be entitled, in lieu
10 of the annuity otherwise provided under the amendments
11 made by this title, to—

12 (1) an annuity under subchapter III of chapter
13 83, or under chapter 84 (except for subchapters III
14 and VII), of title 5, United States Code, as the case
15 may be, for creditable service before the date on
16 which service would begin to be credited for pur-
17 poses of paragraph (2), and

18 (2) an annuity calculated under subsection (b)
19 or (c) and subsection (g) of section 7443B of the In-
20 ternal Revenue Code of 1986, as added by this Act,
21 for any service as a magistrate judge of the United
22 States Tax Court or special trial judge of the United
23 States Tax Court but only with respect to service as
24 such a magistrate judge or special trial judge after
25 a date not earlier than 9½ years prior to the date

1 of the enactment of this Act (as specified in the elec-
2 tion pursuant to subsection (b)) for which deduc-
3 tions and deposits are made under subsections (j)
4 and (k) of such section 7443B, as applicable, with-
5 out regard to the minimum number of years of serv-
6 ice as such a magistrate judge of the United States
7 Tax Court, except that—

8 (A) in the case of a magistrate judge who
9 retired with less than 8 years of service, the an-
10 nuity under subsection (c) of such section
11 7443B shall be equal to that proportion of the
12 salary being received at the time the magistrate
13 judge leaves office which the years of service
14 bears to 14, subject to a reduction in accord-
15 ance with subsection (c) of such section 7443B
16 if the magistrate judge is under age 65 at the
17 time he or she leaves office, and

18 (B) the aggregate amount of the annuity
19 initially payable on retirement under this sub-
20 section may not exceed the rate of pay for the
21 magistrate judge which is in effect on the day
22 before the retirement becomes effective.

23 (b) FILING OF NOTICE OF ELECTION.—A magistrate
24 judge of the United States Tax Court shall be entitled to
25 an annuity under this section only if the magistrate judge

1 files a notice of that election with the chief judge of the
2 United States Tax Court specifying the date on which
3 service would begin to be credited under section 7443B
4 of the Internal Revenue Code of 1986, as added by this
5 Act, in lieu of chapter 83 or chapter 84 of title 5, United
6 States Code. Such notice shall be filed in accordance with
7 such procedures as the chief judge of the United States
8 Tax Court shall prescribe.

9 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-
10 istrate judge of the United States Tax Court who makes
11 an election under subsection (b) shall be entitled to a
12 lump-sum credit under section 8342 or 8424 of title 5,
13 United States Code, as the case may be, for any service
14 which is covered under section 7443B of the Internal Rev-
15 enue Code of 1986, as added by this Act, pursuant to that
16 election, and with respect to which any contributions were
17 made by the magistrate judge under the applicable provi-
18 sions of title 5, United States Code.

19 (d) RECALL.—With respect to any magistrate judge
20 of the United States Tax Court receiving an annuity under
21 this section who is recalled to serve under section 7443C
22 of the Internal Revenue Code of 1986, as added by this
23 Act—

24 (1) the amount of compensation which such re-
25 called magistrate judge receives under such section

1 7443C shall be calculated on the basis of the annu-
2 ity received under this section, and

3 (2) such recalled magistrate judge of the United
4 States Tax Court may serve as a reemployed annu-
5 itant to the extent otherwise permitted under title 5,
6 United States Code.

7 Section 7443B(m)(4) of the Internal Revenue Code of
8 1986, as added by this Act, shall not apply with respect
9 to service as a reemployed annuitant described in para-
10 graph (2).

11 **SEC. 1212. PROVISIONS FOR RECALL.**

12 (a) IN GENERAL.—Part I of subchapter C of chapter
13 76, as amended by this Act, is amended by inserting after
14 section 7443B the following new section:

15 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**
16 **COURT.**

17 “(a) RECALLING OF RETIRED MAGISTRATE
18 JUDGES.—Any individual who has retired pursuant to sec-
19 tion 7443B or the applicable provisions of title 5, United
20 States Code, upon reaching the age and service require-
21 ments established therein, may at or after retirement be
22 called upon by the chief judge of the Tax Court to perform
23 such judicial duties with the Tax Court as may be re-
24 quested of such individual for any period or periods speci-

1 fied by the chief judge; except that in the case of any such
2 individual—

3 “(1) the aggregate of such periods in any 1 cal-
4 endar year shall not (without such individual’s con-
5 sent) exceed 90 calendar days, and

6 “(2) such individual shall be relieved of per-
7 forming such duties during any period in which ill-
8 ness or disability precludes the performance of such
9 duties.

10 Any act, or failure to act, by an individual performing ju-
11 dicial duties pursuant to this subsection shall have the
12 same force and effect as if it were the act (or failure to
13 act) of a magistrate judge of the Tax Court.

14 “(b) COMPENSATION.—For the year in which a pe-
15 riod of recall occurs, the magistrate judge shall receive,
16 in addition to the annuity provided under the provisions
17 of section 7443B or under the applicable provisions of title
18 5, United States Code, an amount equal to the difference
19 between that annuity and the current salary of the office
20 to which the magistrate judge is recalled. The annuity of
21 the magistrate judge who completes that period of service,
22 who is not recalled in a subsequent year, and who retired
23 under section 7443B, shall be equal to the salary in effect
24 at the end of the year in which the period of recall oc-
25 curred for the office from which such individual retired.

1 “(c) RULEMAKING AUTHORITY.—The provisions of
2 this section may be implemented under such rules as may
3 be promulgated by the Tax Court.”

4 (b) CONFORMING AMENDMENT.—The table of sec-
5 tions for part I of subchapter C of chapter 76, as amended
6 by this Act, is amended by inserting after the item relating
7 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

8 **SEC. 1213. EFFECTIVE DATE.**

9 Except as otherwise provided, the amendments made
10 by this subtitle shall take effect on the date of the enact-
11 ment of this Act.

12 **TITLE XIII—OTHER PROVISIONS**
13 **Subtitle A—Administrative**
14 **Provision**

15 **SEC. 1301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

16 (a) IN GENERAL.—If this section applies to any plan
17 or contract amendment—

18 (1) such plan or contract shall be treated as
19 being operated in accordance with the terms of the
20 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 plan shall not fail to meet the re-
24 quirements of section 411(d)(6) of the Internal Rev-
25 enue Code of 1986 and section 204(g) of the Em-

1 ployee Retirement Income Security Act of 1974 by
2 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 plan or annuity contract
6 which is made—

7 (A) pursuant to any amendment made by
8 this Act or the Economic Growth and Tax Re-
9 lief Reconciliation Act of 2001, or pursuant to
10 any regulation issued by the Secretary of the
11 Treasury or the Secretary of Labor under such
12 Acts, and

13 (B) on or before the last day of the first
14 plan year beginning on or after January 1,
15 2007, or such later date as the Secretary of the
16 Treasury may prescribe.

17 In the case of a governmental plan (as defined in
18 section 414(d) of the Internal Revenue Code of
19 1986), subparagraph (B) shall be applied by sub-
20 stituting the date which is 2 years after the date
21 otherwise applied under subparagraph (B).

22 (2) CONDITIONS.—This section shall not apply
23 to any amendment unless—

24 (A) during the period—

1 (i) beginning on the date the legisla-
2 tive or regulatory amendment described in
3 paragraph (1)(A) takes effect (or in the
4 case of a plan or contract amendment not
5 required by such legislative or regulatory
6 amendment, the effective date specified by
7 the plan), and

8 (ii) ending on the date described in
9 paragraph (1)(B) (or, if earlier, the date
10 the plan or contract amendment is adopt-
11 ed),

12 the plan or contract is operated as if such plan
13 or contract amendment were in effect; and

14 (B) such plan or contract amendment ap-
15 plies retroactively for such period.

16 **SEC. 1302. AUTHORITY TO THE SECRETARY OF LABOR, SEC-**
17 **RETARY OF THE TREASURY, AND THE PEN-**
18 **SION BENEFIT GUARANTY CORPORATION TO**
19 **POSTPONE CERTAIN DEADLINES.**

20 The Secretary of Labor, the Secretary of the Treas-
21 ury, and the Executive Director of the Pension Benefit
22 Guaranty Corporation shall exercise their authority under
23 section 518 of the Employee Retirement Income Security
24 Act of 1974 (29 U.S.C. 1148) and section 7508A of the
25 Internal Revenue Code of 1986 to postpone certain dead-

1 lines by reason of the Presidentially declared disaster
2 areas in Louisiana, Mississippi, Alabama, Texas, Florida,
3 or elsewhere, due to the effect of Hurricane Katrina, Rita,
4 or Wilma. The Secretaries and the Executive Director of
5 the Corporation shall issue guidance as soon as is prac-
6 ticable to plan sponsors and participants regarding exten-
7 sion of deadlines and rules applicable to these extraor-
8 dinary circumstances. Nothing in this section shall be con-
9 strued to relieve any plan sponsor from any requirement
10 to pay benefits or make contributions under the plan of
11 the sponsor.

12 **Subtitle B—Governmental Pension**
13 **Plan Equalization**

14 **SEC. 1311. DEFINITION OF GOVERNMENTAL PLAN.**

15 (a) AMENDMENT TO INTERNAL REVENUE CODE OF
16 1986.—Section 414(d) of the Internal Revenue Code of
17 1986 (definition of governmental plan) is amended by add-
18 ing at the end the following: “The term ‘governmental
19 plan’ includes a plan established or maintained for its em-
20 ployees by an Indian tribal government (as defined in sec-
21 tion 7701(a)(40)), a subdivision of an Indian tribal gov-
22 ernment (determined in accordance with section 7871(d)),
23 an agency instrumentality (or subdivision) of an Indian
24 tribal government, or an entity established under Federal,

1 State, or tribal law which is wholly owned or controlled
2 by any of the foregoing.”

3 (b) AMENDMENT TO EMPLOYEE RETIREMENT IN-
4 COME SECURITY ACT OF 1974.—Section 3(32) of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1002(32)) is amended by adding at the end the
7 following: “The term ‘governmental plan’ includes a plan
8 established or maintained for its employees by an Indian
9 tribal government (as defined in section 7701(a)(40)), a
10 subdivision of an Indian tribal government (determined in
11 accordance with section 7871(d)), an agency instrumen-
12 tality (or subdivision) of an Indian tribal government, or
13 an entity established under Federal, State, or tribal law
14 that is wholly owned or controlled by any of the fore-
15 going.”

16 **SEC. 1312. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
17 **CURRENT MORATORIUM ON APPLICATION OF**
18 **CERTAIN NONDISCRIMINATION RULES APPLI-**
19 **CABLE TO STATE AND LOCAL PLANS.**

20 (a) IN GENERAL.—

21 (1) Subparagraph (G) of section 401(a)(5) and
22 subparagraph (G) of section 401(a)(26) of the Inter-
23 nal Revenue Code of 1986 are each amended by
24 striking “section 414(d)” and all that follows and
25 inserting “section 414(d).”.

1 (2) Subparagraph (G) of section 401(k)(3) of
2 such Code and paragraph (2) of section 1505(d) of
3 the Taxpayer Relief Act of 1997 (Public Law 105–
4 34; 111 Stat. 1063) are each amended by striking
5 “maintained by a State or local government or polit-
6 ical subdivision thereof (or agency or instrumentality
7 thereof)”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) The heading of subparagraph (G) of section
10 401(a)(5) of the Internal Revenue Code of 1986 is
11 amended by striking “STATE AND LOCAL GOVERN-
12 MENTAL” and inserting “GOVERNMENTAL”.

13 (2) The heading of subparagraph (G) of section
14 401(a)(26) of such Code is amended by striking
15 “EXCEPTION FOR STATE AND LOCAL” and inserting
16 “EXCEPTION FOR”.

17 (3) Section 401(k)(3)(G) of such Code is
18 amended by inserting “GOVERNMENTAL PLAN.—”
19 after “(G)”.

1 **SEC. 1313. CLARIFICATION THAT TRIBAL GOVERNMENTS**
2 **ARE SUBJECT TO THE SAME DEFINED BEN-**
3 **EFIT PLAN RULES AND REGULATIONS AP-**
4 **PLIED TO STATE AND OTHER LOCAL GOV-**
5 **ERNMENTS, THEIR POLICE AND FIRE-**
6 **FIGHTERS.**

7 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
8 1986.—

9 (1) POLICE AND FIREFIGHTERS.—Subpara-
10 graph (H) section 415(b)(2) of the Internal Revenue
11 Code of 1986 (defining participant) is amended—

12 (A) in clause (i), by striking “State or po-
13 litical subdivision” and inserting “State, Indian
14 tribal government (as defined in section
15 7701(a)(40)), or any political subdivision”; and

16 (B) in clause (ii)(I), by striking “State or
17 political subdivision” each place it appears and
18 inserting “State, Indian tribal government (as
19 so defined), or any political subdivision”.

20 (2) STATE AND LOCAL GOVERNMENT PLANS.—

21 (A) IN GENERAL.—Subparagraph (A) of
22 section 415(b)(10) of such Code (relating to
23 limitation to equal accrued benefit) is
24 amended—

1 (i) by inserting “, Indian tribal gov-
2 ernment (as defined in section
3 7701(a)(40)),” after “State”;

4 (ii) by inserting “any” before “polit-
5 ical subdivision”; and

6 (iii) by inserting “any of” before “the
7 foregoing”.

8 (B) CONFORMING AMENDMENT.—The
9 heading of paragraph (1) of section 415(b) of
10 such Code is amended by striking “SPECIAL
11 RULE FOR STATE AND” and inserting “SPECIAL
12 RULE FOR STATE, INDIAN TRIBAL, AND”.

13 (3) GOVERNMENT PICK UP CONTRIBUTIONS.—
14 Paragraph (2) of section 414(h) of such Code (relat-
15 ing to designation by units of government) is amend-
16 ed by striking “State or political subdivision” and
17 inserting “State, Indian tribal government (as de-
18 fined in section 7701(a)(40)), or any political sub-
19 division”.

20 (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
21 COME SECURITY ACT OF 1974.—Section 4021(b) of the
22 Employee Retirement Income Security Act of 1974 (29
23 U.S.C. 1321(b)) is amended—

24 (1) in paragraph (12), by striking “or” at the
25 end;

1 (2) in paragraph (13), by striking “plan.” and
2 inserting “plan; or”; and

3 (3) by adding at the end the following:

4 “(14) established and maintained for its em-
5 ployees by an Indian tribal government (as defined
6 in section 7701(a)(40) of the Internal Revenue Code
7 of 1986), a subdivision of an Indian tribal govern-
8 ment (determined in accordance with section
9 7871(d) of such Code), an agency or instrumentality
10 of an Indian tribal government or subdivision there-
11 of, or an entity established under Federal, State, or
12 tribal law that is wholly owned or controlled by any
13 of the foregoing.”.

14 **SEC. 1314. EFFECTIVE DATE.**

15 The amendments made by this subtitle shall apply to
16 any year beginning before, on, or after the date of the
17 enactment of this Act.

18 **Subtitle C—Miscellaneous**
19 **Provisions**

20 **SEC. 1321. TRANSFER OF EXCESS FUNDS FROM BLACK**
21 **LUNG DISABILITY TRUSTS TO UNITED MINE**
22 **WORKERS OF AMERICA COMBINED BENEFIT**
23 **FUND.**

24 (a) IN GENERAL.—So much of section 501(c)(21)(C)
25 of the Internal Revenue Code of 1986 (relating to black

1 lung disability trusts) as precedes the last sentence is
2 amended to read as follows:

3 “(C) Payments described in subparagraph
4 (A)(i)(IV) may be made from such trust during
5 a taxable year only to the extent that the aggregate
6 amount of such payments during such taxable
7 year does not exceed the excess (if any), as
8 of the close of the preceding taxable year, of—

9 “(i) the fair market value of the as-
10 sets of the trust, over

11 “(ii) 110 percent of the present value
12 of the liability described in subparagraph
13 (A)(i)(I) of such person.”

14 (b) TRANSFER.—Section 9705 of such Code (relating
15 to transfer) is amended by adding at the end the following
16 new subsection:

17 “(c) TRANSFER FROM BLACK LUNG DISABILITY
18 TRUSTS.—

19 “(1) IN GENERAL.—The Secretary shall trans-
20 fer each fiscal year to the Fund from the general
21 fund of the Treasury an amount which the Secretary
22 estimates to be the additional amounts received in
23 the Treasury for that fiscal year by reason of the
24 amendment made by section 1321(a) of the Pension
25 Security and Transparency Act of 2005. The Sec-

1 retary shall adjust the amount transferred for any
2 year to the extent necessary to correct errors in any
3 estimate for any prior year.

4 “(2) USE OF FUNDS.—Any amount transferred
5 to the Combined Fund under paragraph (1) shall be
6 used to proportionately reduce the unassigned bene-
7 ficiary premium under section 9704(a)(3) of each
8 assigned operator for any plan year beginning after
9 December 31, 2002.”

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning after
12 December 31, 2002.

13 **SEC. 1322. TREATMENT OF DEATH BENEFITS FROM COR-**
14 **PORATE-OWNED LIFE INSURANCE.**

15 (a) IN GENERAL.—Section 101 of the Internal Rev-
16 enue Code of 1986 (relating to certain death benefits) is
17 amended by adding at the end the following new sub-
18 section:

19 “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED
20 LIFE INSURANCE CONTRACTS.—

21 “(1) GENERAL RULE.—In the case of an em-
22 ployer-owned life insurance contract, the amount ex-
23 cluded from gross income of an applicable policy-
24 holder by reason of paragraph (1) of subsection (a)
25 shall not exceed an amount equal to the sum of the

1 premiums and other amounts paid by the policy-
2 holder for the contract.

3 “(2) EXCEPTIONS.—In the case of an employer-
4 owned life insurance contract with respect to which
5 the notice and consent requirements of paragraph
6 (4) are met, paragraph (1) shall not apply to any of
7 the following:

8 “(A) EXCEPTIONS BASED ON INSURED’S
9 STATUS.—Any amount received by reason of
10 the death of an insured who, with respect to an
11 applicable policyholder—

12 “(i) was an employee at any time dur-
13 ing the 12-month period before the in-
14 sured’s death, or

15 “(ii) is, at the time the contract is
16 issued—

17 “(I) a director,

18 “(II) a highly compensated em-
19 ployee within the meaning of section
20 414(q) (without regard to paragraph
21 (1)(B)(ii) thereof), or

22 “(III) a highly compensated indi-
23 vidual within the meaning of section
24 105(h)(5), except that ‘35 percent’

1 shall be substituted for ‘25 percent’ in
2 subparagraph (C) thereof.

3 “(B) EXCEPTION FOR AMOUNTS PAID TO
4 INSURED’S HEIRS.—Any amount received by
5 reason of the death of an insured to the
6 extent—

7 “(i) the amount is paid to a member
8 of the family (within the meaning of sec-
9 tion 267(c)(4)) of the insured, any indi-
10 vidual who is the designated beneficiary of
11 the insured under the contract (other than
12 the applicable policyholder), a trust estab-
13 lished for the benefit of any such member
14 of the family or designated beneficiary, or
15 the estate of the insured, or

16 “(ii) the amount is used to purchase
17 an equity (or capital or profits) interest in
18 the applicable policyholder from any person
19 described in clause (i).

20 “(3) EMPLOYER-OWNED LIFE INSURANCE CON-
21 TRACT.—

22 “(A) IN GENERAL.—For purposes of this
23 subsection, the term ‘employer-owned life insur-
24 ance contract’ means a life insurance contract
25 which—

1 “(i) is owned by a person engaged in
2 a trade or business and under which such
3 person (or a related person described in
4 subparagraph (B)(ii)) is directly or indi-
5 rectly a beneficiary under the contract, and

6 “(ii) covers the life of an insured who
7 is an employee with respect to the trade or
8 business of the applicable policyholder on
9 the date the contract is issued.

10 For purposes of the preceding sentence, if cov-
11 erage for each insured under a master contract
12 is treated as a separate contract for purposes of
13 sections 817(h), 7702, and 7702A, coverage for
14 each such insured shall be treated as a separate
15 contract.

16 “(B) APPLICABLE POLICYHOLDER.—For
17 purposes of this subsection—

18 “(i) IN GENERAL.—The term ‘applica-
19 ble policyholder’ means, with respect to
20 any employer-owned life insurance con-
21 tract, the person described in subpara-
22 graph (A)(i) which owns the contract.

23 “(ii) RELATED PERSONS.—The term
24 ‘applicable policyholder’ includes any per-
25 son which—

1 “(I) bears a relationship to the
2 person described in clause (i) which is
3 specified in section 267(b) or
4 707(b)(1), or

5 “(II) is engaged in trades or
6 businesses with such person which are
7 under common control (within the
8 meaning of subsection (a) or (b) of
9 section 52).

10 “(4) NOTICE AND CONSENT REQUIREMENTS.—

11 The notice and consent requirements of this para-
12 graph are met if, before the issuance of the contract,
13 the employee—

14 “(A) is notified in writing that the applica-
15 ble policyholder intends to insure the employee’s
16 life and the maximum face amount for which
17 the employee could be insured at the time the
18 contract was issued,

19 “(B) provides written consent to being in-
20 sured under the contract and that such cov-
21 erage may continue after the insured terminates
22 employment, and

23 “(C) is informed in writing that an appli-
24 cable policyholder will be a beneficiary of any

1 proceeds payable upon the death of the em-
2 ployee.

3 “(5) DEFINITIONS.—For purposes of this
4 subsection—

5 “(A) EMPLOYEE.—The term ‘employee’ in-
6 cludes an officer, director, and highly com-
7 pensated employee (within the meaning of sec-
8 tion 414(q)).

9 “(B) INSURED.—The term ‘insured’
10 means, with respect to an employer-owned life
11 insurance contract, an individual covered by the
12 contract who is a United States citizen or resi-
13 dent. In the case of a contract covering the
14 joint lives of 2 individuals, references to an in-
15 sured include both of the individuals.”.

16 (b) REPORTING REQUIREMENTS.—Subpart A of part
17 III of subchapter A of chapter 61 of the Internal Revenue
18 Code of 1986 (relating to information concerning persons
19 subject to special provisions) is amended by inserting after
20 section 6039H the following new section:

21 **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**
22 **EMPLOYER-OWNED LIFE INSURANCE CON-**
23 **TRACTS.**

24 “(a) IN GENERAL.—Every applicable policyholder
25 owning 1 or more employer-owned life insurance contracts

1 issued after the date of the enactment of this section shall
2 file a return (at such time and in such manner as the
3 Secretary shall by regulations prescribe) showing for each
4 year such contracts are owned—

5 “(1) the number of employees of the applicable
6 policyholder at the end of the year,

7 “(2) the number of such employees insured
8 under such contracts at the end of the year,

9 “(3) the total amount of insurance in force at
10 the end of the year under such contracts,

11 “(4) the name, address, and taxpayer identifica-
12 tion number of the applicable policyholder and the
13 type of business in which the policyholder is en-
14 gaged, and

15 “(5) that the applicable policyholder has a valid
16 consent for each insured employee (or, if all such
17 consents are not obtained, the number of insured
18 employees for whom such consent was not obtained).

19 “(b) RECORDKEEPING REQUIREMENT.—Each appli-
20 cable policyholder owning 1 or more employer-owned life
21 insurance contracts during any year shall keep such
22 records as may be necessary for purposes of determining
23 whether the requirements of this section and section
24 101(j) are met.

1 “(c) DEFINITIONS.—Any term used in this section
2 which is used in section 101(j) shall have the same mean-
3 ing given such term by section 101(j).”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) Paragraph (1) of section 101(a) of the In-
6 ternal Revenue Code of 1986 is amended by striking
7 “and subsection (f)” and inserting “subsection (f),
8 and subsection (j)”.

9 (2) The table of sections for subpart A of part
10 III of subchapter A of chapter 61 of such Code is
11 amended by inserting after the item relating to sec-
12 tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-owned life insurance
contracts.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to life insurance contracts issued
15 after the date of the enactment of this Act, except for a
16 contract issued after such date pursuant to an exchange
17 described in section 1035 of the Internal Revenue Code
18 of 1986 for a contract issued on or prior to that date.
19 For purposes of the preceding sentence, any material in-
20 crease in the death benefit or other material change shall
21 cause the contract to be treated as a new contract except
22 that, in the case of a master contract (within the meaning
23 of section 264(f)(4)(E) of such Code), the addition of cov-

1 ered lives shall be treated as a new contract only with re-
2 spect to such additional covered lives.

3 **Subtitle D—Other Related Pension**
4 **Provisions**

5 **PART I—HEALTH AND MEDICAL BENEFITS**

6 **SEC. 1331. USE OF EXCESS PENSION ASSETS FOR FUTURE**
7 **RETIREE HEALTH BENEFITS.**

8 (a) IN GENERAL.—Section 420 of the Internal Rev-
9 enue Code of 1986 (relating to transfers of excess pension
10 assets to retiree health accounts), as amended by this Act,
11 is amended by adding at the end the following new sub-
12 section:

13 “(f) QUALIFIED TRANSFER TO COVER FUTURE RE-
14 TIREE HEALTH COSTS.—

15 “(1) IN GENERAL.—An employer maintaining a
16 defined benefit plan (other than a multiemployer
17 plan) may elect for any taxable year to have the plan
18 make a qualified future transfer rather than a quali-
19 fied transfer for the taxable year. Except as pro-
20 vided in this subsection, a qualified future transfer
21 shall be treated for purposes of this title and the
22 Employee Retirement Income Security Act of 1974
23 as if it were a qualified transfer.

24 “(2) QUALIFIED FUTURE TRANSFER.—For pur-
25 poses of this subsection—

1 “(A) IN GENERAL.—The term ‘qualified
2 future transfer’ means a transfer which meets
3 all of the requirements for a qualified transfer,
4 except that—

5 “(i) the determination of excess pen-
6 sion assets shall be made under subpara-
7 graph (B),

8 “(ii) the limitation on the amount
9 transferred shall be made under subpara-
10 graph (C), and

11 “(iii) the minimum cost requirements
12 of subsection (c)(3) shall be modified as
13 provided under subparagraph (D).

14 “(B) EXCESS PENSION ASSETS.—

15 “(i) IN GENERAL.—In determining ex-
16 cess pension assets for purposes of this
17 subsection, subsection (e)(2) shall be ap-
18 plied by substituting ‘115 percent’ for ‘125
19 percent’.

20 “(ii) REQUIREMENT TO MAINTAIN
21 FUNDED STATUS.—If, as of any valuation
22 date of any plan year in the transfer pe-
23 riod, the amount determined under sub-
24 section (e)(2)(B) (after application of

1 clause (i)) exceeds the amount determined
2 under subsection (e)(2)(A), either—

3 “(I) the employer maintaining
4 the plan shall make contributions to
5 the plan in an amount not less than
6 the amount required to reduce such
7 excess to zero as of such date, or

8 “(II) there is transferred from
9 the health benefits account to the plan
10 an amount not less than the amount
11 required to reduce such excess to zero
12 as of such date.

13 “(C) LIMITATION ON AMOUNT TRANS-
14 FERRED.—Notwithstanding subsection (b)(3),
15 the amount of the excess pension assets which
16 may be transferred in a qualified future trans-
17 fer shall be equal to the sum of—

18 “(i) if the transfer period includes the
19 taxable year of the transfer, the amount
20 determined under subsection (b)(3) for
21 such taxable year, plus

22 “(ii) in the case of all other taxable
23 years in the transfer period, the sum of the
24 qualified current retiree health liabilities
25 which the plan reasonably estimates, in ac-

1 cordance with guidance issued by the Sec-
2 retary, will be incurred for each of such
3 years.

4 “(D) MINIMUM COST REQUIREMENTS.—

5 “(i) IN GENERAL.—The requirements
6 of subsection (c)(3) shall be treated as met
7 if each group health plan or arrangement
8 under which applicable health benefits are
9 provided provides applicable health benefits
10 during the period beginning with the first
11 year of the transfer period and ending with
12 the last day of the 4th year following the
13 transfer period such that the annual aver-
14 age amount of such benefits provided dur-
15 ing such period is not less than the appli-
16 cable employer cost determined under sub-
17 section (c)(3)(A) with respect to the trans-
18 fer.

19 “(ii) ELECTION TO MAINTAIN BENE-
20 FITS.—An employer may elect, in lieu of
21 the requirements of clause (i), to meet the
22 requirements of subsection (c)(3) by meet-
23 ing the requirements of such subsection (as
24 in effect before the amendments made by
25 section 535 of the Tax Relief Extension

1 Act of 1999) for each of the years de-
2 scribed in the period under clause (i).

3 “(3) COORDINATION WITH OTHER TRANS-
4 FERS.—In applying subsection (b)(3) to any subse-
5 quent transfer during a taxable year in a transfer
6 period, qualified current retiree health liabilities
7 shall be reduced by any such liabilities taken into ac-
8 count with respect to the qualified future transfer to
9 which such period relates.

10 “(4) TRANSFER PERIOD.—For purposes of this
11 subsection, the term ‘transfer period’ means, with
12 respect to any transfer, a period of consecutive tax-
13 able years specified in the election under paragraph
14 (1) which begins and ends during the 10-taxable-
15 year period beginning with the taxable year of the
16 transfer.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to transfers after the date of the
19 enactment of this Act.

20 **SEC. 1332. SPECIAL RULES FOR FUNDING OF COLLEC-**
21 **TIVELY BARGAINED RETIREE HEALTH BENE-**
22 **FITS.**

23 (a) COLLECTIVELY BARGAINED TRANSFER TREATED
24 AS A QUALIFIED TRANSFER.—

1 (1) IN GENERAL.—Section 420(b) of the Inter-
2 nal Revenue Code of 1986 (defining qualified trans-
3 fer) is amended by redesignating paragraph (5) as
4 paragraph (6) and by inserting after paragraph (4)
5 the following new paragraph:

6 “(5) A collectively bargained transfer (as de-
7 fined in subsection (e)(5)) shall be treated as a
8 qualified transfer.”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Subparagraph (B) of section 420(b)(2)
11 of such Code is amended by inserting “or a col-
12 lectively bargained transfer” after “paragraph
13 (4)”.

14 (B) Paragraph (3) of section 420(b) of
15 such Code is amended to read as follows:

16 “(3) LIMITATION ON AMOUNT TRANSFERRED.—

17 “(A) IN GENERAL.—The amount of excess
18 pension assets which may be transferred in a
19 qualified transfer (other than a collectively bar-
20 gained transfer) shall not exceed the amount
21 which is reasonably estimated to be the amount
22 the employer maintaining the plan will pay
23 (whether directly or through reimbursement)
24 out of such account during the taxable year of

1 the transfer for qualified current retiree health
2 liabilities.

3 “(B) EXCEPTION FOR COLLECTIVELY BAR-
4 GAINED TRANSFERS.—The amount of excess
5 pension assets which may be transferred in a
6 collectively bargained transfer shall not exceed
7 the amount which is reasonably estimated, in
8 accordance with the provisions of the collective
9 bargaining agreement and generally accepted
10 accounting principles, to be the amount the em-
11 ployer maintaining the plan will pay (whether
12 directly or through reimbursement) out of such
13 account during the collectively bargained cost
14 maintenance period for collectively bargained
15 retiree health liabilities.”.

16 (b) REQUIREMENTS OF PLANS MAKING COLLEC-
17 TIVELY BARGAINED TRANSFERS.—

18 (1) IN GENERAL.—Paragraph (1) of section
19 420(c) of the Internal Revenue Code of 1986 (relat-
20 ing to requirements of plan transferring assets) is
21 amended to read as follows:

22 “(1) USE OF TRANSFERRED ASSETS.—

23 “(A) IN GENERAL.—Except in the case of
24 a collectively bargained transfer, any assets
25 transferred to a health benefits account in a

1 qualified transfer (and any income allocable
2 thereto) shall be used only to pay qualified cur-
3 rent retiree health liabilities (other than liabil-
4 ities of key employees not taken into account
5 under subsection (e)(1)(D)) for the taxable year
6 of the transfer (whether directly or through re-
7 imbursement).

8 “(B) COLLECTIVELY BARGAINED TRANS-
9 FER.—Any assets transferred to a health bene-
10 fits account in a collectively bargained transfer
11 (and any income allocable thereto) shall be used
12 only to pay collectively bargained retiree health
13 liabilities (other than liabilities of key employees
14 not taken into account under subsection
15 (e)(6)(D)) for the taxable year of the transfer
16 or for any subsequent taxable year during the
17 collectively bargained cost maintenance period
18 (whether directly or through reimbursement).

19 “(C) AMOUNTS NOT USED TO PAY FOR
20 HEALTH BENEFITS.—

21 “(i) IN GENERAL.—Any assets trans-
22 ferred to a health benefits account in a
23 qualified transfer (and any income allo-
24 cable thereto) which are not used as pro-
25 vided in subparagraph (A) (in the case of

1 a qualified transfer other than a collec-
2 tively bargained transfer) or cannot be
3 used as provided in subparagraph (B) (in
4 the case of a collectively bargained trans-
5 fer) shall be transferred out of the account
6 to the transferor plan.

7 “(ii) TAX TREATMENT OF
8 AMOUNTS.—Any amount transferred out of
9 an account under clause (i)—

10 “(I) shall not be includible in the
11 gross income of the employer, but

12 “(II) shall be treated as an em-
13 ployer reversion for purposes of sec-
14 tion 4980 (without regard to sub-
15 section (d) thereof).

16 “(D) ORDERING RULE.—For purposes of
17 this section, any amount paid out of a health
18 benefits account shall be treated as paid first
19 out of the assets and income described in sub-
20 paragraph (A) (in the case of a qualified trans-
21 fer other than a collectively bargained transfer)
22 or subparagraph (B) (in the case of a collec-
23 tively bargained transfer).”.

24 (2) CONFORMING AMENDMENTS.—

1 (A) Subparagraph (A) of section 420(e)(3)
2 of such Code is amended to read as follows:

3 “(A) IN GENERAL.—The requirements of
4 this paragraph are met if—

5 “(i) except as provided in clause (ii),
6 each group health plan or arrangement
7 under which applicable health benefits are
8 provided provides that the applicable em-
9 ployer cost for each taxable year during
10 the cost maintenance period shall not be
11 less than the higher of the applicable em-
12 ployer costs for each of the 2 taxable years
13 immediately preceding the taxable year of
14 the qualified transfer, and

15 “(ii) in the case of a collectively bar-
16 gained transfer, each collectively bargained
17 group health plan under which collectively
18 bargained health benefits are provided pro-
19 vides that the collectively bargained em-
20 ployer cost for each taxable year during
21 the collectively bargained cost maintenance
22 period shall not be less than the amount
23 specified by the collective bargaining agree-
24 ment.”.

1 (B) Section 420(c)(3) of such Code is
2 amended by redesignating subparagraphs (C),
3 (D), and (E) as subparagraphs (D), (E), and
4 (F), respectively, and by inserting after sub-
5 paragraph (B) the following new subparagraph:

6 “(C) COLLECTIVELY BARGAINED EM-
7 PLOYER COST.—For purposes of this para-
8 graph, the term ‘collectively bargained employer
9 cost’ means the average cost per covered indi-
10 vidual of providing collectively bargained retiree
11 health benefits as determined in accordance
12 with the applicable collective bargaining agree-
13 ment. Such agreement may provide for an ap-
14 propriate reduction in the collectively bargained
15 employer cost to take into account any portion
16 of the collectively bargained retiree health bene-
17 fits that is provided or financed by a govern-
18 ment program or other source.”.

19 (C) Subparagraph (E) of section 420(c)(3)
20 of such Code (as redesignated by subparagraph
21 (B)) is amended to read as follows:

22 “(E) MAINTENANCE PERIOD.—For pur-
23 poses of this paragraph—

24 “(i) COST MAINTENANCE PERIOD.—
25 The term ‘cost maintenance period’ means

1 the period of 5 taxable years beginning
2 with the taxable year in which the qualified
3 transfer occurs. If a taxable year is in 2 or
4 more overlapping cost maintenance peri-
5 ods, this paragraph shall be applied by
6 taking into account the highest applicable
7 employer cost required to be provided
8 under subparagraph (A)(i) for such taxable
9 year.

10 “(ii) COLLECTIVELY BARGAINED COST
11 MAINTENANCE PERIOD.—The term ‘collec-
12 tively bargained cost maintenance period’
13 means, with respect to each covered retiree
14 and his covered spouse and dependents,
15 the shorter of—

16 “(I) the remaining lifetime of
17 such covered retiree and his covered
18 spouse and dependents, or

19 “(II) the period of coverage pro-
20 vided by the collectively bargained
21 health plan (determined as of the date
22 of the collectively bargained transfer)
23 with respect to such covered retiree
24 and his covered spouse and depend-
25 ents.”.

1 (c) LIMITATIONS ON EMPLOYER.—Subsection (d) of
2 section 420 of the Internal Revenue Code of 1986 is
3 amended to read as follows:

4 “(d) LIMITATIONS ON EMPLOYER.—For purposes of
5 this title—

6 “(1) DEDUCTION LIMITATIONS.—No deduction
7 shall be allowed—

8 “(A) for the transfer of any amount to a
9 health benefits account in a qualified transfer
10 (or any retransfer to the plan under subsection
11 (e)(1)(C)),

12 “(B) for qualified current retiree health li-
13 abilities or collectively bargained retiree health
14 liabilities paid out of the assets (and income)
15 described in subsection (e)(1), or

16 “(C) except in the case of a collectively
17 bargained transfer, for any amounts to which
18 subparagraph (B) does not apply and which are
19 paid for qualified current retiree health liabil-
20 ities for the taxable year to the extent such
21 amounts are not greater than the excess (if
22 any) of—

23 “(i) the amount determined under
24 subparagraph (A) (and income allocable
25 thereto), over

1 “(ii) the amount determined under
2 subparagraph (B).

3 “(2) OTHER LIMITATIONS.—

4 “(A) NO CONTRIBUTIONS ALLOWED.—Ex-
5 cept as provided in subparagraph (B), an em-
6 ployer may not contribute after December 31,
7 1990, any amount to a health benefits account
8 or welfare benefit fund (as defined in section
9 419(e)(1)) with respect to qualified current re-
10 tiree health liabilities for which transferred as-
11 sets are required to be used under subsection
12 (c)(1)(A).

13 “(B) EXCEPTION.—An employer may con-
14 tribute an amount to a health benefits account
15 or welfare benefit fund (as defined in section
16 419(e)(1)) with respect to collectively bargained
17 retiree health liabilities for which transferred
18 assets are required to be used under subsection
19 (c)(1)(B), and the deductibility of any such con-
20 tribution shall be governed by the limits appli-
21 cable to the deductibility of contributions to a
22 welfare benefit fund under a collective bar-
23 gaining agreement (as determined under section
24 419A(f)(5)(A)) without regard to whether such
25 contributions are made to a health benefits ac-

1 count or welfare benefit fund and without re-
2 gard to the provisions of section 404 or the
3 other provisions of this section. The Secretary
4 shall provide rules to ensure that the applica-
5 tion of this section does not result in a deduc-
6 tion being allowed more than once for the same
7 contribution or for 2 or more contributions or
8 expenditures relating to the same collectively
9 bargained retiree health liabilities.”.

10 (d) DEFINITIONS.—Section 420(e) of the Internal
11 Revenue Code of 1986 (relating to definition and special
12 rules) is amended by adding at the end the following new
13 paragraphs:

14 “(5) COLLECTIVELY BARGAINED TRANSFER.—
15 The term ‘collectively bargained transfer’ means a
16 transfer—

17 “(A) of excess pension assets to a health
18 benefits account which is part of such plan in
19 a taxable year beginning after December 31,
20 2005, and

21 “(B) which does not contravene any other
22 provision of law,

23 “(C) with respect to which are met in con-
24 nection with the plan—

1 been provided directly by the employer and
2 the employer used the cash receipts and
3 disbursements method of accounting) is at
4 least 5 percent of the gross receipts of the
5 employer (determined in accordance with
6 the last sentence of subsection
7 (c)(2)(E)(ii)(II)) for such taxable year,

8 “(ii) or a plan maintained by a suc-
9 cessor to such employer.

10 Such term shall not include a transfer after De-
11 cember 31, 2013.

12 “(6) COLLECTIVELY BARGAINED RETIREE
13 HEALTH LIABILITIES.—

14 “(A) IN GENERAL.—The term ‘collectively
15 bargained retiree health liabilities’ means the
16 present value, as of the beginning of a taxable
17 year and determined in accordance with the ap-
18 plicable collective bargaining agreement, of all
19 collectively bargained health benefits (including
20 administrative expenses) for such taxable year
21 and all subsequent taxable years during the col-
22 lectively bargained cost maintenance period.

23 “(B) REDUCTION FOR AMOUNTS PRE-
24 VIOUSLY SET ASIDE.—The amount determined
25 under subparagraph (A) shall be reduced by the

1 value (as of the close of the plan year preceding
2 the year of the collectively bargained transfer)
3 of the assets in all health benefits accounts or
4 welfare benefit funds (as defined in section
5 419(e)(1)) set aside to pay for the collectively
6 bargained retiree health liabilities.

7 “(C) KEY EMPLOYEES EXCLUDED.—If an
8 employee is a key employee (within the meaning
9 of section 416(I)(1)) with respect to any plan
10 year ending in a taxable year, such employee
11 shall not be taken into account in computing
12 collectively bargained retiree health liabilities
13 for such taxable year or in calculating collec-
14 tively bargained employer cost under subsection
15 (c)(3)(C).

16 “(7) COLLECTIVELY BARGAINED HEALTH BEN-
17 EFITS.—The term ‘collectively bargained health ben-
18 efits’ means health benefits or coverage which are
19 provided to—

20 “(A) retired employees who, immediately
21 before the collectively bargained transfer, are
22 entitled to receive such benefits upon retirement
23 and who are entitled to pension benefits under
24 the plan, and their spouses and dependents,
25 and

1 “(B) if specified by the provisions of the
2 collective bargaining agreement governing the
3 collectively bargained transfer, active employees
4 who, following their retirement, are entitled to
5 receive such benefits and who are entitled to
6 pension benefits under the plan, and their
7 spouses and dependents.

8 “(8) COLLECTIVELY BARGAINED HEALTH
9 PLAN.—The term ‘collectively bargained health plan’
10 means a group health plan or arrangement for re-
11 tired employees and their spouses and dependents
12 that is maintained pursuant to 1 or more collective
13 bargaining agreements.”.

14 (e) CONFORMING AMENDMENT.—The last sentence
15 of section 401(h) of the Internal Revenue Code of 1986
16 is amended by inserting “(other than contributions with
17 respect to collectively bargained retiree health liabilities
18 within the meaning of section 420(e)(6))” after “medical
19 benefits”.

20 (f) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to years beginning after December
22 31, 2004.

1 **SEC. 1333. ALLOWANCE OF RESERVE FOR MEDICAL BENE-**
2 **FITS OF PLANS SPONSORED BY BONA FIDE**
3 **ASSOCIATIONS.**

4 (a) IN GENERAL.—Section 419A(c) of the Internal
5 Revenue Code of 1986 (relating to account limit) is
6 amended by adding at the end the following new para-
7 graph:

8 “(6) ADDITIONAL RESERVE FOR MEDICAL BEN-
9 EFITS OF BONA FIDE ASSOCIATION PLANS.—

10 “(A) IN GENERAL.—An applicable account
11 limit for any taxable year may include a reserve
12 in an amount not to exceed 35 percent of the
13 sum of—

14 “(i) the qualified direct costs, and
15 “(ii) the change in claims incurred
16 but unpaid,
17 for such taxable year with respect to medical
18 benefits (other than post-retirement medical
19 benefits).

20 “(B) APPLICABLE ACCOUNT LIMIT.—For
21 purposes of this subsection, the term ‘applicable
22 account limit’ means an account limit for a
23 qualified asset account with respect to medical
24 benefits provided through a plan maintained by
25 a bona fide association (as defined in section

1 2791(d)(3) of the Public Health Service Act
2 (42 U.S.C. 300gg-91(d)(3))”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to taxable years ending after De-
5 cember 31, 2005.

6 **PART II—CASH OR DEFERRED ARRANGEMENTS**

7 **SEC. 1336. TREATMENT OF ELIGIBLE COMBINED DEFINED**
8 **BENEFIT PLANS AND QUALIFIED CASH OR**
9 **DEFERRED ARRANGEMENTS.**

10 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—
11 Section 414 of the Internal Revenue Code of 1986, as
12 amended by this Act, is amended by adding at the end
13 the following new subsection:

14 “(x) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
15 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
16 FERRED ARRANGEMENTS.—

17 “(1) GENERAL RULE.—Except as provided in
18 this subsection, the requirements of this title shall
19 be applied to any defined benefit plan or applicable
20 defined contribution plan which are part of an eligi-
21 ble combined plan in the same manner as if each
22 such plan were not a part of the eligible combined
23 plan.

24 “(2) ELIGIBLE COMBINED PLAN.—For pur-
25 poses of this subsection—

1 “(A) IN GENERAL.—The term ‘eligible
2 combined plan’ means a plan—

3 “(i) which is maintained by an em-
4 ployer which, at the time the plan is estab-
5 lished, is a small employer,

6 “(ii) which consists of a defined ben-
7 efit plan and an applicable defined con-
8 tribution plan,

9 “(iii) the assets of which are held in
10 a single trust forming part of the plan and
11 are clearly identified and allocated to the
12 defined benefit plan and the applicable de-
13 fined contribution plan to the extent nec-
14 essary for the separate application of this
15 title under paragraph (1), and

16 “(iv) with respect to which the ben-
17 efit, contribution, vesting, and non-
18 discrimination requirements of subpara-
19 graphs (B), (C), (D), (E), and (F) are
20 met.

21 For purposes of this subparagraph, the term
22 ‘small employer’ has the meaning given such
23 term by section 4980D(d)(2), except that such
24 section shall be applied by substituting ‘500’ for
25 ‘50’ each place it appears.

1 “(B) BENEFIT REQUIREMENTS.—

2 “(i) IN GENERAL.—The benefit re-
3 quirements of this subparagraph are met
4 with respect to the defined benefit plan
5 forming part of the eligible combined plan
6 if the accrued benefit of each participant
7 derived from employer contributions, when
8 expressed as an annual retirement benefit,
9 is not less than the applicable percentage
10 of the participant’s final average pay. For
11 purposes of this clause, final average pay
12 shall be determined using the period of
13 consecutive years (not exceeding 5) during
14 which the participant had the greatest ag-
15 gregate compensation from the employer.

16 “(ii) APPLICABLE PERCENTAGE.—For
17 purposes of clause (i), the applicable per-
18 centage is the lesser of—

19 “(I) 1 percent multiplied by the
20 number of years of service with the
21 employer, or

22 “(II) 20 percent.

23 “(iii) SPECIAL RULE FOR CASH BAL-
24 ANCE PLANS.—If the defined benefit plan
25 under clause (i) is a qualified cash balance

1 plan (within the meaning of section
 2 411(b)(5)), the plan shall be treated as
 3 meeting the requirements of clause (i) with
 4 respect to any plan year if each participant
 5 receives pay credit for the year which is
 6 not less than the percentage of compensa-
 7 tion determined in accordance with the fol-
 8 lowing table:

“If the participant’s age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

9 “(iv) YEARS OF SERVICE.—For pur-
 10 poses of this subparagraph, years of serv-
 11 ice shall be determined under the rules of
 12 paragraphs (4), (5), and (6) of section
 13 411(a), except that the plan may not dis-
 14 regard any year of service because of a
 15 participant making, or failing to make, any
 16 elective deferral with respect to the quali-
 17 fied cash or deferred arrangement to which
 18 subparagraph (C) applies.

19 “(C) CONTRIBUTION REQUIREMENTS.—

20 “(i) IN GENERAL.—The contribution
 21 requirements of this subparagraph with re-
 22 spect to any applicable defined contribu-

1 “(II) an employee who has com-
2 pleted at least 3 years of service has
3 a nonforfeitable right to 100 percent
4 of the employee’s accrued benefit de-
5 rived under the arrangement from
6 nonelective contributions of the em-
7 ployer.

8 For purposes of this subparagraph, the
9 rules of section 411 shall apply to the ex-
10 tent not inconsistent with this subpara-
11 graph.

12 “(E) UNIFORM PROVISION OF BENE-
13 FITS.—In the case of a defined benefit plan or
14 applicable defined contribution plan forming
15 part of an eligible combined plan, the require-
16 ments of this subparagraph are met if all bene-
17 fits under each such plan, and all rights and
18 features under each such plan, must be pro-
19 vided uniformly to all participants.

20 “(F) REQUIREMENTS MUST BE MET WITH-
21 OUT TAKING INTO ACCOUNT SOCIAL SECURITY
22 AND SIMILAR CONTRIBUTIONS AND BENEFITS
23 OR OTHER PLANS.—

1 “(i) IN GENERAL.—The requirements
2 of this subparagraph are met if the re-
3 quirements of clauses (ii) and (iii) are met.

4 “(ii) SOCIAL SECURITY AND SIMILAR
5 CONTRIBUTIONS.—The requirements of
6 this clause are met if—

7 “(I) the requirements of subpara-
8 graphs (B) and (C) are met without
9 regard to section 401(l), and

10 “(II) the requirements of sections
11 401(a)(4) and 410(b) are met with re-
12 spect to both the applicable defined
13 contribution plan and defined benefit
14 plan forming part of an eligible com-
15 bined plan without regard to section
16 401(l).

17 “(iii) OTHER PLANS AND ARRANGE-
18 MENTS.—The requirements of this clause
19 are met if the applicable defined contribu-
20 tion plan and defined benefit plan forming
21 part of an eligible combined plan meet the
22 requirements of sections 401(a)(4) and
23 410(b) without being combined with any
24 other plan.

1 “(3) NONDISCRIMINATION REQUIREMENTS FOR
2 QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

3 “(A) IN GENERAL.—A qualified cash or
4 deferred arrangement which is included in an
5 applicable defined contribution plan forming
6 part of an eligible combined plan shall be treat-
7 ed as meeting the requirements of section
8 401(k)(3)(A)(ii) if the requirements of para-
9 graph (2)(C) are met with respect to such ar-
10 rangement.

11 “(B) MATCHING CONTRIBUTIONS.—In ap-
12 plying section 401(m)(11) to any matching con-
13 tribution with respect to a contribution to which
14 paragraph (2)(C) applies, the contribution re-
15 quirement of paragraph (2)(C) and the notice
16 requirements of paragraph (5)(B) shall be sub-
17 stituted for the requirements otherwise applica-
18 ble under clauses (i) and (ii) of section
19 401(m)(11)(A).

20 “(4) SATISFACTION OF TOP-HEAVY RULES.—A
21 defined benefit plan and applicable defined contribu-
22 tion plan forming part of an eligible combined plan
23 for any plan year shall be treated as meeting the re-
24 quirements of section 416 for the plan year.

1 “(5) AUTOMATIC CONTRIBUTION ARRANGE-
2 MENT.—For purposes of this subsection—

3 “(A) IN GENERAL.—A qualified cash or
4 deferred arrangement shall be treated as an
5 automatic contribution arrangement if the
6 arrangement—

7 “(i) provides that each employee eligi-
8 ble to participate in the arrangement is
9 treated as having elected to have the em-
10 ployer make elective contributions in an
11 amount equal to 4 percent of the employ-
12 ee’s compensation unless the employee spe-
13 cifically elects not to have such contribu-
14 tions made or to have such contributions
15 made at a different rate, and

16 “(ii) meets the notice requirements
17 under subparagraph (B).

18 “(B) NOTICE REQUIREMENTS.—

19 “(i) IN GENERAL.—The requirements
20 of this subparagraph are met if the re-
21 quirements of clauses (ii) and (iii) are met.

22 “(ii) REASONABLE PERIOD TO MAKE
23 ELECTION.—The requirements of this
24 clause are met if each employee to whom
25 subparagraph (A)(i) applies—

1 “(I) receives a notice explaining
2 the employee’s right under the ar-
3 rangement to elect not to have elective
4 contributions made on the employee’s
5 behalf or to have the contributions
6 made at a different rate, and

7 “(II) has a reasonable period of
8 time after receipt of such notice and
9 before the first elective contribution is
10 made to make such election.

11 “(iii) ANNUAL NOTICE OF RIGHTS
12 AND OBLIGATIONS.—The requirements of
13 this clause are met if each employee eligi-
14 ble to participate in the arrangement is,
15 within a reasonable period before any year,
16 given notice of the employee’s rights and
17 obligations under the arrangement.

18 The requirements of clauses (i) and (ii) of sec-
19 tion 401(k)(12)(D) shall be met with respect to
20 the notices described in clauses (ii) and (iii) of
21 this subparagraph.

22 “(6) COORDINATION WITH OTHER REQUIRE-
23 MENTS.—

1 “(A) TREATMENT OF SEPARATE PLANS.—
2 Section 414(k) shall not apply to an eligible
3 combined plan.

4 “(B) REPORTING.—An eligible combined
5 plan shall be treated as a single plan for pur-
6 poses of sections 6058 and 6059.

7 “(7) APPLICABLE DEFINED CONTRIBUTION
8 PLAN.—For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘applicable
10 defined contribution plan’ means a defined con-
11 tribution plan which includes a qualified cash or
12 deferred arrangement.

13 “(B) QUALIFIED CASH OR DEFERRED AR-
14 RANGEMENT.—The term ‘qualified cash or de-
15 ferred arrangement’ has the meaning given
16 such term by section 401(k)(2).”.

17 (b) AMENDMENTS OF ERISA.—

18 (1) IN GENERAL.—Section 210 of the Employee
19 Retirement Income Security Act of 1974 is amended
20 by adding at the end the following new subsection:

21 “(e) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
22 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
23 FERRED ARRANGEMENTS.—

24 “(1) GENERAL RULE.—Except as provided in
25 this subsection, this Act shall be applied to any de-

1 defined benefit plan or applicable individual account
2 plan which are part of an eligible combined plan in
3 the same manner as if each such plan were not a
4 part of the eligible combined plan.

5 “(2) ELIGIBLE COMBINED PLAN.—For pur-
6 poses of this subsection—

7 “(A) IN GENERAL.—The term ‘eligible
8 combined plan’ means a plan—

9 “(i) which, at the time the plan is es-
10 tablished, is maintained by a small em-
11 ployer,

12 “(ii) which consists of a defined ben-
13 efit plan and an applicable individual ac-
14 count plan each of which qualifies under
15 section 401(a) of the Internal Revenue
16 Code of 1986,

17 “(iii) the assets of which are held in
18 a single trust forming part of the plan and
19 are clearly identified and allocated to the
20 defined benefit plan and the applicable in-
21 dividual account plan to the extent nec-
22 essary for the separate application of this
23 Act under paragraph (1), and

24 “(iv) with respect to which the ben-
25 efit, contribution, vesting, and non-

1 discrimination requirements of subpara-
2 graphs (B), (C), (D), (E), and (F) are
3 met.

4 For purposes of this subparagraph, the term
5 ‘small employer’ has the meaning given such
6 term by section 4980D(d)(2), except that such
7 section shall be applied by substituting ‘500’ for
8 ‘50’ each place it appears.

9 “(B) BENEFIT REQUIREMENTS.—

10 “(i) IN GENERAL.—The benefit re-
11 quirements of this subparagraph are met
12 with respect to the defined benefit plan
13 forming part of the eligible combined plan
14 if the accrued benefit of each participant
15 derived from employer contributions, when
16 expressed as an annual retirement benefit,
17 is not less than the applicable percentage
18 of the participant’s final average pay. For
19 purposes of this clause, final average pay
20 shall be determined using the period of
21 consecutive years (not exceeding 5) during
22 which the participant had the greatest ag-
23 gregate compensation from the employer.

1 “(ii) APPLICABLE PERCENTAGE.—For
 2 purposes of clause (i), the applicable per-
 3 centage is the lesser of—

4 “(I) 1 percent multiplied by the
 5 number of years of service with the
 6 employer, or

7 “(II) 20 percent.

8 “(iii) SPECIAL RULE FOR CASH BAL-
 9 ANCE PLANS.—If the defined benefit plan
 10 under clause (i) is a qualified cash balance
 11 plan (within the meaning of section
 12 204(b)(5)), the plan shall be treated as
 13 meeting the requirements of clause (i) with
 14 respect to any plan year if each participant
 15 receives pay credit for the year which is
 16 not less than the percentage of compensa-
 17 tion determined in accordance with the fol-
 18 lowing table:

“If the participant’s age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

19 “(iv) YEARS OF SERVICE.—For pur-
 20 poses of this subparagraph, years of serv-
 21 ice shall be determined under the rules of
 22 paragraphs (1), (2), and (3) of section
 23 203(b), except that the plan may not dis-

1 regard any year of service because of a
2 participant making, or failing to make, any
3 elective deferral with respect to the quali-
4 fied cash or deferred arrangement to which
5 subparagraph (C) applies.

6 “(C) CONTRIBUTION REQUIREMENTS.—

7 “(i) IN GENERAL.—The contribution
8 requirements of this subparagraph with re-
9 spect to any applicable individual account
10 plan forming part of eligible combined plan
11 are met if—

12 “(I) the qualified cash or de-
13 ferred arrangement included in such
14 plan constitutes an automatic con-
15 tribution arrangement, and

16 “(II) the employer is required to
17 make matching contributions on be-
18 half of each employee eligible to par-
19 ticipate in the arrangement in an
20 amount equal to 50 percent of the
21 elective contributions of the employee
22 to the extent such elective contribu-
23 tions do not exceed 4 percent of com-
24 pensation.

1 Rules similar to the rules of clauses (ii)
2 and (iii) of section 401(k)(12)(B) of the
3 Internal Revenue Code of 1986 shall apply
4 for purposes of this clause.

5 “(ii) NONELECTIVE CONTRIBUTIONS.—An applicable individual account
6 TIONS.—An applicable individual account
7 plan shall not be treated as failing to meet
8 the requirements of clause (i) because the
9 employer makes nonelective contributions
10 under the plan but such contributions shall
11 not be taken into account in determining
12 whether the requirements of clause (i)(II)
13 are met.

14 “(D) VESTING REQUIREMENTS.—The vest-
15 ing requirements of this subparagraph are met
16 if—

17 “(i) in the case of a defined benefit
18 plan forming part of an eligible combined
19 plan an employee who has completed at
20 least 3 years of service has a nonforfeitable
21 right to 100 percent of the employee’s ac-
22 crued benefit under the plan derived from
23 employer contributions, and

1 “(ii) in the case of an applicable indi-
2 vidual account plan forming part of eligible
3 combined plan—

4 “(I) an employee has a non-
5 forfeitable right to any matching con-
6 tribution made under the qualified
7 cash or deferred arrangement included
8 in such plan by an employer with re-
9 spect to any elective contribution, in-
10 cluding matching contributions in ex-
11 cess of the contributions required
12 under subparagraph (C)(i)(II), and

13 “(II) an employee who has com-
14 pleted at least 3 years of service has
15 a nonforfeitable right to 100 percent
16 of the employee’s accrued benefit de-
17 rived under the arrangement from
18 nonelective contributions of the em-
19 ployer.

20 For purposes of this subparagraph, the
21 rules of section 203 shall apply to the ex-
22 tent not inconsistent with this subpara-
23 graph.

24 “(E) UNIFORM PROVISION OF BENE-
25 FITS.—In the case of a defined benefit plan or

1 applicable individual account plan forming part
2 of an eligible combined plan, the requirements
3 of this subparagraph are met if all benefits
4 under each such plan, and all rights and fea-
5 tures under each such plan, must be provided
6 uniformly to all participants.

7 “(F) REQUIREMENTS MUST BE MET WITH-
8 OUT TAKING INTO ACCOUNT SOCIAL SECURITY
9 AND SIMILAR CONTRIBUTIONS AND BENEFITS
10 OR OTHER PLANS.—

11 “(i) IN GENERAL.—The requirements
12 of this subparagraph are met if the re-
13 quirements of clauses (ii) and (iii) are met.

14 “(ii) SOCIAL SECURITY AND SIMILAR
15 CONTRIBUTIONS.—The requirements of
16 this clause are met if—

17 “(I) the requirements of subpara-
18 graphs (B) and (C) are met without
19 regard to section 401(l) of the Inter-
20 nal Revenue Code of 1986, and

21 “(II) the requirements of sections
22 401(a)(4) and 410(b) of the Internal
23 Revenue Code of 1986 are met with
24 respect to both the applicable defined
25 contribution plan and defined benefit

1 plan forming part of an eligible com-
2 bined plan without regard to section
3 401(l) of the Internal Revenue Code
4 of 1986.

5 “(iii) OTHER PLANS AND ARRANGE-
6 MENTS.—The requirements of this clause
7 are met if the applicable defined contribu-
8 tion plan and defined benefit plan forming
9 part of an eligible combined plan meet the
10 requirements of sections 401(a)(4) and
11 410(b) of the Internal Revenue Code of
12 1986 without being combined with any
13 other plan.

14 “(3) NONDISCRIMINATION REQUIREMENTS FOR
15 QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

16 “(A) IN GENERAL.—A qualified cash or
17 deferred arrangement which is included in an
18 applicable individual account plan forming part
19 of an eligible combined plan shall be treated as
20 meeting the requirements of section
21 401(k)(3)(A)(ii) of the Internal Revenue Code
22 of 1986 if the requirements of subparagraph
23 (C) are met with respect to such arrangement.

24 “(B) MATCHING CONTRIBUTIONS.—In ap-
25 plying section 401(m)(11) of such Code to any

1 matching contribution with respect to a con-
2 tribution to which paragraph (2)(C) applies, the
3 contribution requirement of paragraph (2)(C)
4 and the notice requirements of paragraph
5 (5)(B) shall be substituted for the requirements
6 otherwise applicable under clauses (i) and (ii) of
7 section 401(m)(11)(A) of such Code.

8 “(4) AUTOMATIC CONTRIBUTION ARRANGE-
9 MENT.—For purposes of this subsection—

10 “(A) IN GENERAL.—A qualified cash or
11 deferred arrangement shall be treated as an
12 automatic contribution arrangement if the
13 arrangement—

14 “(i) provides that each employee eligi-
15 ble to participate in the arrangement is
16 treated as having elected to have the em-
17 ployer make elective contributions in an
18 amount equal to 4 percent of the employ-
19 ee’s compensation unless the employee spe-
20 cifically elects not to have such contribu-
21 tions made or to have such contributions
22 made at a different rate, and

23 “(ii) meets the notice requirements
24 under subparagraph (B).

25 “(B) NOTICE REQUIREMENTS.—

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1 “(i) IN GENERAL.—The requirements
2 of this subparagraph are met if the re-
3 quirements of clauses (ii) and (iii) are met.

4 “(ii) REASONABLE PERIOD TO MAKE
5 ELECTION.—The requirements of this
6 clause are met if each employee to whom
7 subparagraph (A)(i) applies—

8 “(I) receives a notice explaining
9 the employee’s right under the ar-
10 rangement to elect not to have elective
11 contributions made on the employee’s
12 behalf or to have the contributions
13 made at a different rate, and

14 “(II) has a reasonable period of
15 time after receipt of such notice and
16 before the first elective contribution is
17 made to make such election.

18 “(iii) ANNUAL NOTICE OF RIGHTS
19 AND OBLIGATIONS.—The requirements of
20 this clause are met if each employee eligi-
21 ble to participate in the arrangement is,
22 within a reasonable period before any year,
23 given notice of the employee’s rights and
24 obligations under the arrangement.

1 The requirements of clauses (i) and (ii) of sec-
2 tion 401(k)(12)(D) of the Internal Revenue
3 Code of 1986 shall be met with respect to the
4 notices described in clauses (ii) and (iii) of this
5 subparagraph.

6 “(5) COORDINATION WITH OTHER REQUIRE-
7 MENTS.—

8 “(A) TREATMENT OF SEPARATE PLANS.—
9 Section 414(k) of the Internal Revenue Code of
10 1986 shall not apply to an eligible combined
11 plan.

12 “(B) REPORTING.—An eligible combined
13 plan shall be treated as a single plan for pur-
14 poses of section 103.

15 “(6) APPLICABLE INDIVIDUAL ACCOUNT
16 PLAN.—For purposes of this subsection—

17 “(A) IN GENERAL.—The term ‘applicable
18 individual account plan’ means an individual ac-
19 count plan which includes a qualified cash or
20 deferred arrangement.

21 “(B) QUALIFIED CASH OR DEFERRED AR-
22 RANGEMENT.—The term ‘qualified cash or de-
23 ferred arrangement’ has the meaning given
24 such term by section 401(k)(2) of the Internal
25 Revenue Code of 1986.”.

1 (2) CONFORMING CHANGES.—

2 (A) The heading for section 210 of such
3 Act is amended to read as follows:

4 **“SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPE-**
5 **CIAL RULES.”.**

6 (B) The table of contents in section 1 of
7 such Act is amended by striking the item relat-
8 ing to section 210 and inserting the following
9 new item:

“Sec. 210. Multiple employer plans and other special rules”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan years beginning after De-
12 cember 31, 2008.

13 **SEC. 1337. STATE AND LOCAL GOVERNMENTS ELIGIBLE TO**
14 **MAINTAIN SECTION 401(k) PLANS.**

15 (a) IN GENERAL.—Clause (ii) of section
16 401(k)(4)(B) of the Internal Revenue Code of 1986 (relat-
17 ing to governments ineligible) is amended to read as fol-
18 lows:

19 “(ii) GOVERNMENTS ELIGIBLE.—A
20 State or local government or political sub-
21 division thereof, or any agency or instru-
22 mentality thereof, may include a qualified
23 cash or deferred arrangement as part of a
24 plan maintained by it.”

1 (b) COORDINATION WITH SECTION 457 LIMITS.—
2 Section 402(g) of the Internal Revenue Code of 1986 is
3 amended by adding at the end the following:

4 “(9) COORDINATION OF SECTION 457 LIMITS
5 FOR STATE AND LOCAL GOVERNMENTAL PLANS.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), in the case of an individual
8 who is a participant in 1 or more qualified cash
9 or deferred arrangements maintained by a gov-
10 ernmental entity described in section
11 401(k)(4)(B)(ii), the amount excludable from
12 gross income under paragraph (1) with respect
13 to the individual for any taxable year with re-
14 spect to elective deferrals under such arrange-
15 ments shall be reduced by the aggregate
16 amounts deferred under section 457 with re-
17 spect to the individual for the taxable year
18 under 1 or more eligible deferred compensation
19 plans (as defined in section 457(b)) maintained
20 by an employer described in section
21 457(e)(1)(A).

22 “(B) SPECIAL RULE FOR PRE-1986 GRAND-
23 FATHERED PLANS.—Subparagraph (A) shall
24 not apply to any qualified cash or deferred ar-
25 rangement maintained by a governmental entity

1 described in section 401(k)(4)(B)(ii) if the ar-
2 rangement (or any predecessor) was adopted by
3 the entity before May 6, 1986, or treated as so
4 adopted under section 1116(f)(2)(B) of the Tax
5 Reform Act of 1986.”

6 (c) EFFECTIVE DATES.—The amendments made by
7 this section shall apply to plan years beginning after De-
8 cember 31, 2005.

9 PART III—EXCESS CONTRIBUTIONS

10 SEC. 1339. EXCESS CONTRIBUTIONS.

11 (a) EXPANSION OF CORRECTIVE DISTRIBUTION PE-
12 RIOD FOR AUTOMATIC CONTRIBUTION ARRANGE-
13 MENTS.—Subsection (f) of section 4979 of the Internal
14 Revenue Code of 1986 is amended—

15 (1) by and inserting “(6 months in the case of
16 an excess contribution or excess aggregate contribu-
17 tion to an eligible automatic contribution arrange-
18 ment (as defined in section 414(w)(3)))” after “2½
19 months” in paragraph (1), and

20 (2) by striking “2½ MONTHS OF” in the head-
21 ing and inserting “SPECIFIED PERIOD AFTER”.

22 (b) YEAR OF INCLUSION.—Paragraph (2) of section
23 4979(f) of such Code is amended to read as follows:

24 “(2) YEAR OF INCLUSION.—Any amount dis-
25 tributed as provided in paragraph (1) shall be treat-

1 ed as earned and received by the recipient in the re-
2 cipient's taxable year in which such distributions
3 were made.”.

4 (c) SIMPLIFICATION OF ALLOCABLE EARNINGS.—

5 (1) SECTION 4979.—Subsection (f) of section
6 4979 of such Code is amended—

7 (A) by adding “through the end of the
8 plan year for which the contribution was made”
9 after “thereto” in paragraph (1), and

10 (B) by adding “through the end of the
11 plan year for which the contributions were
12 made” after “thereto” in paragraph (2)(B).

13 (2) SECTION 401(k) AND 401(M).—

14 (A) Clause (i) of section 401(k)(8)(A) is
15 amended by adding “through the end of such
16 year” after “such contributions”.

17 (B) Subparagraph (A) of section
18 401(m)(6) of such Code is amended by adding
19 “through the end of such year” after “to such
20 contributions”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to years beginning after December
23 31, 2005.

1 **PART IV—OTHER PROVISIONS**
2 **SEC. 1341. AMENDMENTS RELATING TO PROHIBITED**
3 **TRANSACTIONS.**

4 (a) EXEMPTION FOR BLOCK TRADING.—

5 (1) IN GENERAL.—Section 408(b) of the Em-
6 ployee Retirement Income Security Act (29 U.S.C.
7 1108(b)) is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(14) BLOCK TRADING.—

10 “(A) IN GENERAL.—Any transaction in-
11 volving the purchase or sale of securities be-
12 tween a plan and a party in interest (other than
13 a fiduciary who has investment discretion or
14 control with respect to the assets involved in
15 the transaction or is providing investment ad-
16 vice as a fiduciary for purposes of this title to
17 enter into the transaction) with respect to a
18 plan if—

19 “(i) the transaction involves a block
20 trade,

21 “(ii) at the time of the transaction,
22 the interest of the plan (together with the
23 interests of any other plans maintained by
24 the same plan sponsor) does not exceed 10
25 percent of the aggregate size of the block
26 trade,

1 “(iii) the terms of the transaction, in-
2 cluding the price, are at least as favorable
3 to the plan as an arm’s length transaction,
4 and

5 “(iv) compensation associated with the
6 purchase and sale is not greater than an
7 arm’s length transaction with an unrelated
8 party.

9 “(B) BLOCK TRADE.—For purposes of this
10 paragraph, the term ‘block trade’ includes any
11 trade of at least 10,000 shares or with a mar-
12 ket value of at least \$200,000 which will be al-
13 located across two or more unrelated client ac-
14 counts of a fiduciary.”.

15 (2) CONFORMING AMENDMENTS.—

16 (A) Section 4975(d) of such Code is
17 amended—

18 (i) by striking “or” at the end of
19 paragraph (15),

20 (ii) by striking the period at the end
21 of paragraph (16)(F) and inserting “; or”,
22 and

23 (iii) by adding at the end the fol-
24 lowing new paragraph:

1 “(17) any transaction involving the purchase or
2 sale of securities between a plan and a disqualified
3 person (other than a fiduciary who has investment
4 discretion or control over the transaction or is pro-
5 viding investment advice as a fiduciary for purposes
6 of title I of the Employee Retirement Income Secu-
7 rity Act to enter into the transaction) with respect
8 to a plan if—

9 “(A) the transaction involves a block trade,

10 “(B) at the time of the transaction, the in-
11 terest of the plan (together with the interests of
12 any other plans maintained by the same plan
13 sponsor) does not exceed 10 percent of the ag-
14 gregate size of the block trade,

15 “(C) the terms of the transaction, includ-
16 ing the price, are at least as favorable to the
17 plan as an arm’s length transaction, and

18 “(D) compensation associated with the
19 purchase and sale is not greater than an arm’s
20 length transaction with an unrelated party.”.

21 (B) Section 4975(e) of such Code is
22 amended by adding at the end the following
23 new paragraph:

24 “(11) BLOCK TRADE.—The term ‘block trade’
25 includes any trade of at least 10,000 shares or with

1 a market value of at least \$200,000 which will be al-
2 located across two or more unrelated client accounts
3 of a fiduciary.”.

4 (b) BONDING RELIEF.—Section 412(a) of such Act
5 (29 U.S.C. 1112(a)) is amended—

6 (1) by redesignating paragraph (2) as para-
7 graph (3),

8 (2) by striking “and” at the end of paragraph
9 (1), and

10 (3) by inserting after paragraph (1) the fol-
11 lowing new paragraph:

12 “(2) no bond shall be required of any entity
13 which is registered as a broker or a dealer under
14 section 15(b) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78o(b)) if the broker or dealer is
16 subject to the fidelity bond requirements of a self-
17 regulatory organization (within the meaning of sec-
18 tion 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)).”.

19 (c) EXEMPTION FOR FINANCIAL MARKETS TRADING
20 SYSTEMS.—

21 (1) IN GENERAL.—Section 408(b) of such Act,
22 as amended by subsection (b)(1), is amended by
23 adding at the end the following new paragraph:

24 “(15) FINANCIAL MARKETS TRADING SYS-
25 TEMS.—Any transaction involving the purchase and

1 sale of securities between a plan and a fiduciary or
2 a party in interest if—

3 “(A) the transaction is executed through—

4 “(i) a national securities exchange or
5 a trading system owned by a national secu-
6 rities association registered with the Secu-
7 rities and Exchange Commission, regard-
8 less of whether such fiduciary or party in
9 interest (or any affiliate of either) has an
10 interest in such exchange or trading sys-
11 tem,

12 “(ii) an alternative trading system or
13 electronic communication network subject
14 to regulation and oversight by the Securi-
15 ties and Exchange Commission, regardless
16 of whether such fiduciary or party in inter-
17 est (or any affiliate of either) has an inter-
18 est in such alternative trading system or
19 electronic communications network, or

20 “(iii) any other trading system for se-
21 curities or other property approved by the
22 Secretary through regulatory or exemptive
23 relief,

24 “(B) the price associated with the pur-
25 chase and sale is at least as favorable as an

1 arm's length transaction with an unrelated
2 party,

3 “(C) the compensation associated with the
4 purchase and sale is not greater than an arm's
5 length transaction with an unrelated party,

6 “(D) in the event the fiduciary or party in
7 interest directing the transaction (or any affil-
8 iate of either) has an ownership interest in the
9 trading system (other than an exchange or
10 trading system described in subparagraph
11 (A)(i)), the execution of transactions on such
12 system is annually authorized by a plan fidu-
13 ciary,

14 “(E) the transaction is executed in accord-
15 ance with the nondiscretionary rules and proce-
16 dures adopted by such trading system to match
17 offsetting orders, and

18 “(F) in the event the transaction is not ex-
19 ecuted on an exchange or trading system de-
20 scribed in subparagraph (A)(i)—

21 “(i) neither the trading system nor
22 the parties to the transaction take into ac-
23 count the identity of the parties in the exe-
24 cution of trades, and the parties to the
25 transaction do not actually know the iden-

1 tity of the other at the time that the terms
2 and price of the transaction are agreed to,
3 or

4 “(ii) the transaction is effected pursu-
5 ant to rules designed to match purchases
6 and sales at the best price available
7 through the trading system.”.

8 (2) CONFORMING AMENDMENT.—Section
9 4975(d) of such Code (as amended by subsection
10 (b)(2)) is amended—

11 (A) by striking “or” at the end of para-
12 graph (16),

13 (B) by striking the period at the end of
14 paragraph (17)(E) and inserting “; or”, and

15 (C) by adding at the end the following new
16 paragraph:

17 “(18) any transaction involving the purchase
18 and sale of securities or other property between a
19 plan and a fiduciary or a disqualified person if—

20 “(A) the transaction is executed through—

21 “(i) a national securities exchange or
22 a trading system owned by a national secu-
23 rities association registered with the Secu-
24 rities and Exchange Commission, regard-
25 less of whether such fiduciary or disquali-

1 fied person (or any affiliate of either) has
2 an interest in such exchange or trading
3 system,

4 “(ii) an alternative trading system or
5 electronic communication network subject
6 to regulation and oversight by the Securi-
7 ties and Exchange Commission, regardless
8 of whether such fiduciary or disqualified
9 person (or any affiliate of either) has an
10 interest in such alternative trading system
11 or electronic communications network, or

12 “(iii) any other trading system for se-
13 curities or other property approved by the
14 Secretary through regulatory or exemptive
15 relief,

16 “(B) the price associated with the pur-
17 chase and sale is at least as favorable as an
18 arm’s length transaction with an unrelated
19 party,

20 “(C) the compensation associated with the
21 purchase and sale is not greater than an arm’s
22 length transaction with an unrelated party,

23 “(D) in the event the fiduciary or disquali-
24 fied person directing the transaction (or any af-
25 filiate of either) has an ownership interest in

1 the trading system (other than an exchange or
2 trading system described in subparagraph
3 (A)(i)), the execution of transactions on such
4 system is annually authorized by a plan fidu-
5 ciary,

6 “(E) the transaction is executed in accord-
7 ance with the nondiscretionary rules and proce-
8 dures adopted by such trading system to match
9 offsetting orders, and

10 “(F) in the event the transaction is not ex-
11 ecuted on an exchange or trading system de-
12 scribed in subparagraph (A)(i)—

13 “(i) neither the trading system nor
14 the parties to the transaction take into ac-
15 count the identity of the parties in the exe-
16 cution of trades, and the parties to the
17 transaction do not actually know the iden-
18 tity of the other at the time that the terms
19 and price of the transaction are agreed to,
20 or

21 “(ii) the transaction is effected pursu-
22 ant to rules designed to match purchases
23 and sales at the best price available
24 through the trading system.”.

1 (d) RELIEF FOR FOREIGN EXCHANGE TRANS-
2 ACTIONS.—

3 (1) IN GENERAL.—Section 408(b) of such Act
4 (29 U.S.C. 1108(b)), as amended by subsection
5 (c)(1), is amended by adding at the end the fol-
6 lowing new paragraph:

7 “(16) Any foreign exchange transactions, be-
8 tween a bank or broker-dealer (or any affiliate of ei-
9 ther), and a plan or an individual retirement account
10 (within the meaning of section 408 of the Internal
11 Revenue Code of 1986) with respect to which such
12 bank or broker-dealer (or affiliate) is a trustee, cus-
13 todian, fiduciary, or other party in interest, if—

14 “(A) the transaction is in connection with
15 the purchase, holding, 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 broker-dealer (or any
23 affiliate of either) in comparable arm’s-length
24 foreign exchange transactions involving unre-
25 lated parties,

1 “(C) the exchange rate used by such bank
2 or broker-dealer (or affiliate) for a particular
3 foreign exchange transaction does not deviate
4 by more or less than 3 percent from the inter-
5 bank bid and asked rates at the time of the
6 transaction as displayed on an independent
7 service that reports rates of exchange in the
8 foreign currency market for such currency, and

9 “(D) the bank or broker-dealer (or any af-
10 filiate of either) does not have investment dis-
11 cretion, or provide investment advice, with re-
12 spect to the transaction.”.

13 (2) CONFORMING AMENDMENT.—Section
14 4975(d) of such Code, as amended by subsection
15 (c)(2), is amended—

16 (A) by striking “or” at the end of para-
17 graph (17)(E),

18 (B) by striking the period at the end of
19 paragraph (18)(F)(ii) and inserting “; or”, and

20 (C) by adding at the end the following new
21 paragraph:

22 “(19) any foreign exchange transactions, be-
23 tween a bank or broker-dealer (or any affiliate of ei-
24 ther) and a plan or an individual retirement account
25 (within the meaning of section 408) with respect to

1 which such bank or broker-dealer (or affiliate) is a
2 trustee, custodian, fiduciary, or disqualified person,
3 if—

4 “(A) the transaction is in connection with
5 the purchase, holding, or sale of securities,

6 “(B) at the time the foreign exchange
7 transaction is entered into, the terms of the
8 transaction are not less favorable to the plan
9 than the terms generally available in com-
10 parable arm’s length foreign exchange trans-
11 actions between unrelated parties, or the terms
12 afforded by the bank or broker-dealer (or any
13 affiliate of either) in comparable arm’s-length
14 foreign exchange transactions involving unre-
15 lated parties,

16 “(C) the exchange rate used by such bank
17 or broker-dealer (or affiliate) for a particular
18 foreign exchange transaction does not deviate
19 by more or less than 3 percent from the inter-
20 bank bid and asked rates at the time of the
21 transaction as displayed on an independent
22 service that reports rates of exchange in the
23 foreign currency market for such currency, and

24 “(D) the bank or broker-dealer (or any af-
25 filiate of either) does not have investment dis-

1 cretion, or provide investment advice, with re-
2 spect to the transaction.”.

3 (e) CORRECTION PERIOD FOR CERTAIN TRANS-
4 ACTIONS INVOLVING SECURITIES AND COMMODITIES.—

5 (1) IN GENERAL.—Section 408(b) of such Act
6 (29 U.S.C. 1108(b)), as amended by subsection
7 (d)(1), is amended by adding at the end the fol-
8 lowing new paragraph:

9 “(17) CORRECTION PERIOD FOR CERTAIN
10 TRANSACTIONS INVOLVING SECURITIES AND COM-
11 MODITIES.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraphs (B) and (C), a transaction de-
14 scribed in section 406(a) in connection with the
15 acquisition, holding, or disposition of any secu-
16 rity or commodity, if the transaction is cor-
17 rected before the end of the correction period.

18 “(B) EXCEPTION FOR EMPLOYER SECURI-
19 TIES AND REAL PROPERTY.—Subparagraph (A)
20 does not apply to any transaction between a
21 plan and a plan sponsor or its affiliates that in-
22 volves the acquisition or sale of an employer se-
23 curity (as defined in section 407(d)(1)) or the
24 acquisition, sale, or lease of employer real prop-
25 erty (as defined in section 407(d)(2)).

1 “(C) EXCEPTION FOR KNOWING VIOLA-
2 TIONS.—In the case of any fiduciary or other
3 party in interest (or any other person knowingly
4 participating in such transaction), subpara-
5 graph (A) does not apply to any prohibited
6 transaction if, at the time such transaction oc-
7 curs, such fiduciary or party in interest (or
8 other person) knew that the transaction would
9 (without regard to this paragraph) constitute a
10 violation of section 406(a).

11 “(D) CORRECTION PERIOD.—For purposes
12 of this paragraph, the term ‘correction period’
13 means the 14-day period beginning on the date
14 on which such transaction occurs.

15 “(E) OTHER DEFINITIONS.—For purposes
16 of this paragraph—

17 “(i) the term ‘security’ has the mean-
18 ing given such term by section 475(c)(2) of
19 the Internal Revenue Code of 1986 (with-
20 out regard to subparagraph (F)(iii) and
21 the last sentence thereof),

22 “(ii) the term ‘commodity’ has the
23 meaning given such term by section
24 475(e)(2) of such Code (without regard to
25 subparagraph (D)(iii) thereof), and

1 “(iii) the terms ‘correction’ and ‘cor-
2 rect’ mean, with respect to a transaction,
3 undoing the transaction to the extent pos-
4 sible, but in any case, making good to the
5 plan or affected account any losses result-
6 ing from the transaction and restoring to
7 the plan or affected account any profits
8 made through use of the plan.”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 4975(d) of such Code, as
11 amended by subsection (d)(2), is amended—

12 (i) by striking “or” at the end of
13 paragraph (18)(F)(2),

14 (ii) by striking the period at the end
15 of paragraph (19)(D) and inserting “; or”,
16 and

17 (iii) by adding at the end the fol-
18 lowing new paragraph:

19 “(20) except as provided in subparagraph (B)
20 or (C) of subsection (f)(8), a transaction described
21 in subparagraph (A), (B), (C), or (D) of subsection
22 (c)(1) in connection with the acquisition, holding, or
23 disposition of any security or commodity, if the
24 transaction is corrected before the end of the correc-
25 tion period.”.

1 (B) Section 4975(f) of such Code is
2 amended by adding at the end the following
3 new paragraph:

4 “(8) CORRECTION PERIOD.—

5 “(A) IN GENERAL.—For purposes of sub-
6 section (d)(20), the term ‘correction period’
7 means the 14-day period beginning on the date
8 on which such transaction occurs.

9 “(B) EXCEPTION FOR EMPLOYER SECURI-
10 TIES AND REAL PROPERTY.—Subsection
11 (d)(20) does not apply to any transaction be-
12 tween a plan and a plan sponsor or its affiliates
13 that involves the acquisition or sale of an em-
14 ployer security (as defined in section 407(d)(1)
15 of the Employee Retirement Income Security
16 Act) or the acquisition, sale, or lease of em-
17 ployer real property (as defined in section
18 407(d)(2) of such Act).

19 “(C) EXCEPTION FOR KNOWING VIOLA-
20 TIONS.—In the case of any fiduciary or other
21 disqualified person (or any other person know-
22 ingly participating in such transaction), sub-
23 section (d)(20) does not apply to any prohibited
24 transaction if, at the time such transaction oc-
25 curs, such fiduciary or disqualified person (or

1 other person) knew that the transaction would
2 (without regard to subsection (d)(20) or this
3 paragraph) constitute a violation of subpara-
4 graph (A), (B), (C), or (D) of subsection (c)(1).

5 “(D) ABATEMENT OF TAX WHERE THERE
6 IS A CORRECTION.—If a transaction is not
7 treated as a prohibited transaction by reason of
8 subsection (d)(20), then no tax under sub-
9 sections (a) and (b) shall be assessed with re-
10 spect to such transaction, and, if assessed, the
11 assessment shall be abated, and, if collected,
12 shall be credited or refunded as an overpay-
13 ment.

14 “(E) OTHER DEFINITIONS.—For purposes
15 of this paragraph and subsection (d)(20)—

16 “(i) the term ‘security’ has the mean-
17 ing given such term by section 475(e)(2)
18 (without regard to subparagraph (F)(iii)
19 and the last sentence thereof),

20 “(ii) the term ‘commodity’ has the
21 meaning given such term by section
22 475(e)(2) (without regard to subparagraph
23 (D)(iii) thereof), and

24 “(iii) the terms ‘correction’ and ‘cor-
25 rect’ mean, with respect to a transaction,

1 undoing the transaction to the extent pos-
2 sible, but in any case, making good to the
3 plan or affected account any losses result-
4 ing from the transaction and restoring to
5 the plan or affected account any profits
6 made through use of the plan.”.

7 (C) Section 4975(f)(5) of such Code is
8 amended by striking “The terms” and inserting
9 “Except as provided in paragraph (8)(E)(iii),
10 the terms”.

11 (f) CROSS TRADES STUDY.—Not later than 2 years
12 after the date of the enactment of this Act, the Secretary
13 of Labor, in consultation with the President’s Working
14 Group on Financial Markets, shall report to the President
15 and Congress the results of a study on the implications
16 for pension plans, plan sponsors, plan fiduciaries, and plan
17 participants of a prohibited transaction exemption for ac-
18 tive cross trades and the impact that such a prohibited
19 transaction exemption could have on the safety and secu-
20 rity of pension plan assets. The study shall review and
21 include recommendations regarding—

22 (1) the regulation and practice of passive and
23 active cross trades in United States securities mar-
24 kets,

1 (2) the potential benefits and drawbacks of per-
2 mitting active cross trades for retirement funds, and

3 (3) the ease or difficulty in policing cross trad-
4 ing activities for plan sponsors, plan fiduciaries, and
5 any Federal agency charged with safeguarding the
6 Nation's retirement funds.

7 (g) GAO STUDY.—The Comptroller General of the
8 United States shall prepare a preliminary report not later
9 than 2 years after the date of the enactment of this Act
10 and a final report not later than 3 years after such date
11 regarding the effects of the amendments made by this sec-
12 tion, focusing on the effect of electronic communication
13 networks and block trading on plan investments and on
14 the oversight and enforcement activities of the Depart-
15 ment of Labor to protect the rights of plan participants
16 and beneficiaries. The Comptroller General of the United
17 States shall submit the reports required under the pre-
18 ceding sentence to the Committees on Finance and
19 Health, Education, Labor, and Pensions of the Senate and
20 the Committees on Ways and Means and Education and
21 the Workforce of the House of Representatives.

22 (h) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to any transaction after the date
24 of the enactment of this Act.

1 **SEC. 1342. FEDERAL TASK FORCE ON OLDER WORKERS.**

2 (a) ESTABLISHMENT.—Not later than 90 days after
3 the date of enactment of this section, the Secretary of
4 Labor shall establish a Federal Task Force on Older
5 Workers (referred to in this section as the “Task Force”).

6 (b) MEMBERSHIP.—The Task Force established pur-
7 suant to subsection (a) shall be composed of representa-
8 tives from all relevant Federal agencies that have regu-
9 latory jurisdiction over, or a clear policy interest in, pen-
10 sion issues relating to older workers, including the Inter-
11 nal Revenue Service and the Equal Employment Oppor-
12 tunity Commission.

13 (c) ACTIVITIES.—

14 (1) IN GENERAL.—Not later than 1 year after
15 the date of establishment of the Task Force, the
16 Task Force shall—

17 (A) identify statutory and regulatory provi-
18 sions in current pension law that are disincen-
19 tives to work and develop legislative and regu-
20 latory proposals to address such disincentives;
21 and

22 (B) identify best pension practices in the
23 private sector for hiring and retaining older
24 workers, and serve as a clearinghouse of such
25 information.

1 (2) REPORT.—Not later than 1 year after the
2 date of establishment of the Task Force, the Task
3 Force shall submit a report to Congress on the ac-
4 tivities of the Task Force pursuant to paragraph
5 (1). Such report shall be made available to the pub-
6 lic.

7 (d) CONSULTATION.—In carrying out activities pur-
8 suant to this section, the Task Force shall consult with
9 senior, business, labor, and other interested organizations.

10 (e) APPLICABILITY OF FACA; TERMINATION OF
11 TASK FORCE.—

12 (1) FACA.—The Federal Advisory Committee
13 Act (5 U.S.C. App.) shall not apply to the Task
14 Force established pursuant to this section.

15 (2) TERMINATION.—The Task Force shall ter-
16 minate 30 days after the date the Task Force com-
17 pletes all of its duties under this section.

18 **SEC. 1343. TECHNICAL CORRECTIONS TO SAVER ACT.**

19 Section 517 of the Employee Retirement Income Se-
20 curity Act of 1974 (29 U.S.C. 1147) is amended—

21 (1) in subsection (a), by striking “2001 and
22 2005 on or after September 1 of each year involved”
23 and inserting “2006 and 2010”;

24 (2) in subsection (b), by adding at the end the
25 following new sentence: “To effectuate the purposes

1 of this paragraph, the Secretary may enter into a co-
2 operative agreement, pursuant to the Federal Grant
3 and Cooperative Agreement Act of 1977 (31 U.S.C.
4 6301 et seq.), with any appropriate, qualified enti-
5 ty.”;

6 (3) in subsection (e)(2)—

7 (A) by striking “Committee on Labor and
8 Human Resources” in subparagraph (D) and
9 inserting “Committee on Health, Education,
10 Labor, and Pensions”;

11 (B) by striking subparagraph (F) and in-
12 serting the following:

13 “(F) the Chairman and Ranking Member
14 of the Subcommittee on Labor, Health and
15 Human Services, and Education of the Com-
16 mittee on Appropriations of the House of Rep-
17 resentatives and the Chairman and Ranking
18 Member of the Subcommittee on Labor, Health
19 and Human Services, and Education of the
20 Committee on Appropriations of the Senate;”;

21 (C) by redesignating subparagraph (G) as
22 subparagraph (J); and

23 (D) by inserting after subparagraph (F)
24 the following new subparagraphs:

1 “(G) the Chairman and Ranking Member
2 of the Committee on Finance of the Senate;

3 “(H) the Chairman and Ranking Member
4 of the Committee on Ways and Means of the
5 House of Representatives;

6 “(I) the Chairman and Ranking Member
7 of the Subcommittee on Employer-Employee
8 Relations of the Committee on Education and
9 the Workforce of the House of Representatives;
10 and”;

11 (4) in subsection (e)(3)(B), by striking “Janu-
12 ary 31, 1998” and inserting “3 months before the
13 convening of each summit;”;

14 (5) in subsection (f)(1)(C), by inserting “, no
15 later than 90 days prior to the date of the com-
16 mencement of the National Summit,” after “com-
17 ment”;

18 (6) in subsection (g), by inserting “, in con-
19 sultation with the congressional leaders specified in
20 subsection (e)(2),” after “report” the first place it
21 appears in the text;

22 (7) in subsection (i)—

23 (A) by striking “for fiscal years beginning
24 on or after October 1, 1997,”; and

1 (B) by adding at the end the following new
2 paragraph:

3 “(3) RECEPTION AND REPRESENTATION AUTHOR-
4 ITY.—The Secretary is hereby granted reception and rep-
5 resentation authority limited specifically to the events at
6 the National Summit. The Secretary shall use any private
7 contributions accepted in connection with the National
8 Summit prior to using funds appropriated for purposes
9 of the National Summit pursuant to this paragraph.”; and

10 (8) in subsection (k)—

11 (A) by striking “shall enter into a contract
12 on a sole-source basis” and inserting “may
13 enter into a contract on a sole-source basis”;
14 and

15 (B) by striking “in fiscal year 1998”.