

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

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

S.

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

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 “Defined Benefit Security 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.

2

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

- Sec. 111. 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.

Subtitle D—Other Provisions

- Sec. 131. Modification of transition rule to pension funding requirements.

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.

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.

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

Subtitle A—Interest Rate Assumptions and Related Provisions

- Sec. 301. Interest rate assumption for determination of lump sum distributions.
- Sec. 302. Interest rate assumption for applying benefit limitations to lump sum
distributions.

3

- 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.

Subtitle B—Other provisions

- Sec. 311. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
- Sec. 312. Extension of tier ii railroad retirement benefits to surviving former spouses pursuant to divorce agreements.
- Sec. 313. Regulations on time and order of issuance of domestic relations orders.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.
- Sec. 402. PBGC 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 pbge 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.

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.

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. Application of age discrimination and benefit rules to existing plans.
- Sec. 603. Regulations relating to mergers and acquisitions.

TITLE VII—AUTHORITY TO POSTPONE CERTAIN DEADLINES

- Sec. 701. Authority to the Secretary of Labor, Secretary of the Treasury, and the Pension Benefit Guaranty Corporation.

TITLE VIII—ADMINISTRATIVE PROVISION

- Sec. 801. Provisions relating to plan amendments.

1 **Subtitle A—Amendments to Em-**
2 **ployee Retirement Income Secu-**
3 **urity Act of 1974**

4 **SEC. 101. MINIMUM FUNDING STANDARDS.**

5 (a) REPEAL OF EXISTING FUNDING RULES.—Sec-
6 tions 302 through 308 of the Employee Retirement In-
7 come Security Act of 1974 (29 U.S.C. 1082 through
8 1086) are repealed.

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

13 “MINIMUM FUNDING STANDARDS

14 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM
15 FUNDING STANDARD.—

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

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

23 “(A) in the case of a defined benefit plan
24 which is a single-employer plan, the employer
25 makes contributions to or under the plan for

1 the plan year which, in the aggregate, are not
2 less than the minimum required contribution
3 determined under section 303 for the plan for
4 the plan year,

5 “(B) in the case of a money purchase plan
6 which is a single-employer plan, the employer
7 makes contributions to or under the plan for
8 the plan year which are required under the
9 terms of the plan, and

10 “(C) in the case of a multiemployer plan,
11 the employers make contributions to or under
12 the plan for any plan year which, in the aggre-
13 gate, are sufficient to ensure that the plan does
14 not have an accumulated funding deficiency
15 under section 304 as of the end of the plan
16 year.

17 “(b) LIABILITY FOR CONTRIBUTIONS.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the amount of any contribution required
20 by this section (including any required installments
21 under section 303(j)) shall be paid by the employer
22 responsible for making contributions to or under the
23 plan.

24 “(2) JOINT AND SEVERAL LIABILITY WHERE
25 EMPLOYER MEMBER OF CONTROLLED GROUP.—In

1 the case of a single-employer plan, if the employer
2 referred to in paragraph (1) is a member of a con-
3 trolled group, each member of such group shall be
4 jointly and severally liable for payment of such con-
5 tributions.

6 “(c) VARIANCE FROM MINIMUM FUNDING STAND-
7 ARDS.—

8 “(1) WAIVER IN CASE OF BUSINESS HARD-
9 SHIP.—

10 “(A) IN GENERAL.—If—

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

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

22 the Secretary of the Treasury may, subject to
23 subparagraph (C), waive the requirements of
24 subsection (a) for such year with respect to all
25 or any portion of the minimum funding stand-

1 ard. The Secretary of the Treasury shall not
2 waive the minimum funding standard with re-
3 spect to a plan for more than 3 of any 15 (5
4 of any 15 in the case of a multiemployer plan)
5 consecutive plan years.

6 “(B) EFFECTS OF WAIVER.—If a waiver is
7 granted under subparagraph (A) for any plan
8 year—

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

16 “(ii) in the case of a multiemployer
17 plan, the funding standard account shall
18 be credited under section 304(b)(3)(C)
19 with the amount of the waived funding de-
20 ficiency and such amount shall be amor-
21 tized as required under section
22 304(b)(2)(C).

23 “(C) WAIVER OF AMORTIZED PORTION
24 NOT ALLOWED.—The Secretary of the Treasury
25 may not waive under subparagraph (A) any

1 portion of the minimum funding standard
2 under subsection (a) for a plan year which is
3 attributable to any waived funding deficiency
4 for any preceding plan year.

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

12 “(A) the employer is operating at an eco-
13 nomic loss,

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

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

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

22 “(3) WAIVED FUNDING DEFICIENCY.—For pur-
23 poses of this part, the term ‘waived funding defi-
24 ciency’ means the portion of the minimum funding
25 standard under subsection (a) (determined without

1 regard to the waiver) for a plan year waived by the
2 Secretary of the Treasury and not satisfied by em-
3 ployer contributions.

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

6 “(A) SECURITY MAY BE REQUIRED.—

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

15 “(ii) SPECIAL RULES.—Any security
16 provided under clause (i) may be perfected
17 and enforced only by the Pension Benefit
18 Guaranty Corporation, or, at the direction
19 of the Corporation, by a contributing spon-
20 sor (within the meaning of section
21 4001(a)(13)) or a member of such spon-
22 sor’s controlled group (within the meaning
23 of section 4001(a)(14)).

24 “(B) CONSULTATION WITH THE PENSION
25 BENEFIT GUARANTY CORPORATION.—Except as

1 provided in subparagraph (C), the Secretary of
2 the Treasury shall, before granting or modi-
3 fying a waiver under this subsection with re-
4 spect to a plan described in subparagraph
5 (A)(i)—

6 “(i) provide the Pension Benefit
7 Guaranty Corporation with—

8 “(I) notice of the completed ap-
9 plication for any waiver or modifica-
10 tion, and

11 “(II) an opportunity to comment
12 on such application within 30 days
13 after receipt of such notice, and

14 “(ii) consider—

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

17 “(II) any views of any employee
18 organization (within the meaning of
19 section 3(4)) representing participants
20 in the plan which are submitted in
21 writing to the Secretary of the Treas-
22 ury in connection with such applica-
23 tion.

24 Information provided to the Corporation under
25 this subparagraph shall be considered tax re-

1 turn information and subject to the safe-
2 guarding and reporting requirements of section
3 6103(p) of the Internal Revenue Code of 1986.

4 “(C) EXCEPTION FOR CERTAIN WAIV-
5 ERS.—

6 “(i) IN GENERAL.—The preceding
7 provisions of this paragraph shall not
8 apply to any plan with respect to which the
9 sum of—

10 “(I) the aggregate unpaid min-
11 imum required contributions for the
12 plan year and all preceding plan
13 years, and

14 “(II) the present value of all
15 waiver amortization installments de-
16 termined for the plan year and suc-
17 ceeding plan years under section
18 303(e)(2),

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

20 “(ii) TREATMENT OF WAIVERS FOR
21 WHICH APPLICATIONS ARE PENDING.—The
22 amount described in clause (i)(I) shall in-
23 clude any increase in such amount which
24 would result if all applications for waivers
25 of the minimum funding standard under

1 this subsection which are pending with re-
2 spect to such plan were denied.

3 “(iii) UNPAID MINIMUM REQUIRED
4 CONTRIBUTION.—For purposes of this
5 subparagraph—

6 “(I) IN GENERAL.—The term
7 ‘unpaid minimum required contribu-
8 tion’ means, with respect to any plan
9 year, any minimum required contribu-
10 tion under section 303 for the plan
11 year which is not paid on or before
12 the due date (as determined under
13 section 303(j)(1)) for the plan year.

14 “(II) ORDERING RULE.—For
15 purposes of subclause (I), any pay-
16 ment to or under a plan for any plan
17 year shall be allocated first to unpaid
18 minimum required contributions for
19 all preceding plan years on a first-in,
20 first-out basis and then to the min-
21 imum required contribution under sec-
22 tion 303 for the plan year.

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

1 “(A) APPLICATION MUST BE SUBMITTED
2 BEFORE DATE 2¹/₂ MONTHS AFTER CLOSE OF
3 YEAR.—In the case of a single-employer plan,
4 no waiver may be granted under this subsection
5 with respect to any plan for any plan year un-
6 less an application therefor is submitted to the
7 Secretary of the Treasury not later than the
8 15th day of the 3rd month beginning after the
9 close of such plan year.

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

17 “(i) with respect to such employer,
18 and

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

23 The Secretary of the Treasury may provide that
24 an analysis of a trade or business or industry
25 of a member need not be conducted if the Sec-

1 retary of the Treasury determines such analysis
2 is not necessary because the taking into account
3 of such member would not significantly affect
4 the determination under this paragraph.

5 “(6) ADVANCE NOTICE.—

6 “(A) IN GENERAL.—The Secretary of the
7 Treasury shall, before granting a waiver under
8 this subsection, require each applicant to pro-
9 vide evidence satisfactory to such Secretary that
10 the applicant has provided notice of the filing of
11 the application for such waiver to each affected
12 party (as defined in section 4001(a)(21)) and in
13 the case of a multiemployer plan, to each em-
14 ployer required to contribute to the plan under
15 subsection (b)(1). Such notice shall include a
16 description of the extent to which the plan is
17 funded for benefits which are guaranteed under
18 title IV and for benefit liabilities.

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

24 “(7) RESTRICTION ON PLAN AMENDMENTS.—

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

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

18 “(i) the Secretary of the Treasury de-
19 termines to be reasonable and which pro-
20 vides for only de minimis increases in the
21 liabilities of the plan,

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

24 “(iii) is required as a condition of
25 qualification under part I of subchapter D,

1 of chapter 1 of the Internal Revenue Code
2 of 1986.

3 “(8) CROSS REFERENCE.—For corresponding
4 duties of the Secretary of the Treasury with regard
5 to implementation of the Internal Revenue Code of
6 1986, see section 412(c) of such Code.

7 “(d) MISCELLANEOUS RULES.—

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

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

15 “(A) is adopted after the close of such plan
16 year but no later than 2½ months after the
17 close of the plan year (or, in the case of a mul-
18 tiemployer plan, no later than 2 years after the
19 close of such plan year),

20 “(B) does not reduce the accrued benefit
21 of any participant determined as of the begin-
22 ning of the first plan year to which the amend-
23 ment applies, and

24 “(C) does not reduce the accrued benefit of
25 any participant determined as of the time of

1 adoption except to the extent required by the
2 circumstances,
3 shall, at the election of the plan administrator, be
4 deemed to have been made on the first day of such
5 plan year. No amendment described in this para-
6 graph which reduces the accrued benefits of any par-
7 ticipant shall take effect unless the plan adminis-
8 trator files a notice with the Secretary of the Treas-
9 ury notifying him of such amendment and such Sec-
10 retary has approved such amendment, or within 90
11 days after the date on which such notice was filed,
12 failed to disapprove such amendment. No amend-
13 ment described in this subsection shall be approved
14 by the Secretary of the Treasury unless such Sec-
15 retary determines that such amendment is necessary
16 because of a substantial business hardship (as deter-
17 mined under subsection (c)(2)) and that a waiver
18 under subsection (c) (or, in the case of a multiem-
19 ployer plan, any extension of the amortization period
20 under section 304(d)) is unavailable or inadequate.

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

1 (c) CLERICAL AMENDMENT.—The table of contents
2 in section 1 of such Act is amended by striking the items
3 relating to sections 302 through 306 and inserting the fol-
4 lowing new item:

“Sec. 302. Minimum funding standards”.

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

7 **SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DE-**
8 **FINED BENEFIT PENSION PLANS.**

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

13 “MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER
14 DEFINED BENEFIT PENSION PLANS

15 “SEC. 303. (a) MINIMUM REQUIRED CONTRIBU-
16 TION.—For purposes of this section and section
17 302(a)(2)(A), except as provided in subsection (f), the
18 term ‘minimum required contribution’ means, with respect
19 to any plan year of a defined benefit plan which is a single
20 employer plan—

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

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

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

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

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

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

25 “(c) SHORTFALL AMORTIZATION CHARGE.—

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

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

9 “(A) DETERMINATION.—The plan sponsor
10 shall determine the amounts necessary to amor-
11 tize the shortfall amortization base of the plan
12 for any plan year in level annual installments
13 over the 10-plan-year period beginning with
14 such plan year.

15 “(B) SHORTFALL INSTALLMENT.—The
16 shortfall amortization installment for any plan
17 year in the 10-plan-year period under subpara-
18 graph (A) with respect to any shortfall amorti-
19 zation base is the annual installment deter-
20 mined under subparagraph (A) for that year for
21 that base.

22 “(C) SEGMENT RATES.—In determining
23 any shortfall amortization installment under
24 this paragraph, the plan sponsor shall use the
25 segment rates determined under subparagraph

1 (C) of subsection (h)(2), applied under rules
2 similar to the rules of subparagraph (B) of sub-
3 section (h)(2).

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

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

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

22 In any case in which the value of plan assets of the
23 plan is equal to or greater than the funding target
24 of the plan for the plan year, the shortfall amortiza-

1 tion base of the plan for such plan year shall be
2 zero.

3 “(4) FUNDING SHORTFALL.—

4 “(A) IN GENERAL.—For purposes of this
5 section, except as provided in subparagraph
6 (B), the funding shortfall of a plan for any plan
7 year is the excess (if any) of—

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

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

14 “(B) TRANSITION RULE.—For purposes of
15 paragraph (3), in the case of a plan to which
16 section 302(d) of this Act (as in effect on the
17 day before the date of the enactment of the De-
18 fined Benefit Security Act of 2005) did not
19 apply for the plan year beginning in 2006, sub-
20 paragraph (A) shall be applied to plan years be-
21 ginning after 2006 and before 2016 by sub-
22 stituting for the amount described in subpara-
23 graph (A)(i) the applicable percentage of the
24 funding target of the plan for the plan year de-
25 termined under the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is:
2007	91 percent
2008	92 percent
2009	93 percent
2010	94 percent
2011	95 percent
2012	96 percent
2013	97 percent
2014	98 percent
2015	99 percent.

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

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

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

17 “(2) FUNDING TARGET ATTAINMENT PERCENT-
18 AGE.—The ‘funding target attainment percentage’ of
19 a plan for a plan year is the ratio (expressed as a
20 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 plan sponsor
16 shall determine the amounts necessary to amor-
17 tize the waiver amortization base of the plan for
18 any plan year in level annual installments over
19 a period of 5 plan years beginning with the suc-
20 ceeding 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 base for all pre-
19 ceding plan years shall be reduced to zero.

20 “(f) USE OF PREFUNDING BALANCES TO SATISFY
21 MINIMUM REQUIRED CONTRIBUTIONS.—

22 “(1) IN GENERAL.—A plan sponsor may credit
23 any amount of a plan’s prefunding balance for a
24 plan year against the minimum required contribu-
25 tion for the plan year and the amount of the con-

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

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

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

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

15 “(3) LIMITATION FOR UNDERFUNDED PLANS.—

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

18 “(i) the value of plan assets for the
19 preceding plan year, bears to

20 “(ii) the funding target of the plan for
21 the preceding plan year (determined with-
22 out regard to subsection (i)(1)),

23 is less than 80 percent, the preceding provisions
24 of this subsection shall not apply unless employ-
25 ers liable for contributions to the plan under

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

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

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

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

16 “(4) REDUCTION IN VALUE OF ASSETS.—Solely
17 for purposes of applying subsections (a)(2) and
18 (c)(4)(A)(ii) in determining the minimum required
19 contribution under this section, the value of the plan
20 assets otherwise determined without regard to this
21 paragraph shall be reduced by the amount of the
22 prefunding balance under this subsection.

23 “(g) VALUATION OF PLAN ASSETS AND LIABIL-
24 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 500 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) AUTHORIZATION OF USE OF ACTUARIAL
16 VALUE.—For purposes of this section, the value of
17 plan assets shall be determined on the basis of any
18 reasonable actuarial method of valuation which takes
19 into account fair market value and which is per-
20 mitted under regulations prescribed by the Secretary
21 of the Treasury, except that—

22 “(A) any such method providing for aver-
23 aging of fair market values may not provide for
24 averaging of such values over more than the 3

1 most recent plan years preceding the current
2 plan year, and

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

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

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

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

15 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

20 “(A) each of which is reasonable (taking
21 into account the experience of the plan and rea-
22 sonable expectations), and

23 “(B) which, in combination, offer the actu-
24 ary’s best estimate of anticipated experience
25 under the plan.

1 “(2) INTEREST RATES.—

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

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

17 “(i) in the case of liabilities reason-
18 ably determined to be payable during the
19 5-year period beginning on the first day of
20 the plan year, the first segment rate with
21 respect to the applicable month,

22 “(ii) in the case of liabilities reason-
23 ably determined to be payable during the
24 15-year period beginning at the end of the
25 period described in clause (i), the second

1 segment rate with respect to the applicable
2 month, and

3 “(iii) in the case of liabilities reason-
4 ably determined to be payable after the pe-
5 riod described in clause (ii), the third seg-
6 ment rate with respect to the applicable
7 month.

8 “(C) SEGMENT RATES.—For purposes of
9 this paragraph—

10 “(i) FIRST SEGMENT RATE.—The
11 term ‘first 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 of the Treasury for such month
15 on the basis of the corporate bond yield
16 curve for such month, taking into account
17 only that portion of such yield curve which
18 is based on bonds maturing during the 5-
19 year period commencing with such month.

20 “(ii) SECOND SEGMENT RATE.—The
21 term ‘second segment rate’ means, with re-
22 spect to any month, the single rate of in-
23 terest which shall be determined by the
24 Secretary of the Treasury for such month
25 on the basis of the corporate bond yield

1 curve for such month, taking into account
2 only that portion of such yield curve which
3 is based on bonds maturing during each of
4 the years in the 15-year period beginning
5 at the end of the period described in clause
6 (i).

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

18 “(D) CORPORATE BOND YIELD CURVE.—

19 For purposes of this paragraph—

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

1 ment grade corporate bonds with varying
2 maturities.

3 “(ii) 3-YEAR WEIGHTED AVERAGE.—
4 The term ‘3-year weighted average’ means
5 an average determined by using a method-
6 ology under which the most recent year is
7 weighted 50 percent, the year preceding
8 such year is weighted 35 percent, and the
9 second year preceding such year is weight-
10 ed 15 percent.

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

23 “(F) PUBLICATION REQUIREMENTS.—The
24 Secretary of the Treasury shall publish for each
25 month the corporate bond yield curve (and the

1 corporate bond yield curve reflecting the modi-
2 fication described in section
3 205(g)(3)(B)(iii)(I) for such month and each
4 of the rates determined under subparagraph
5 (B) for such month. The Secretary of the
6 Treasury shall also publish a description of the
7 methodology used to determine such yield curve
8 and such rates which is sufficiently detailed to
9 enable plans to make reasonable projections re-
10 garding the yield curve and such rates for fu-
11 ture months based on the plan's projection of
12 future interest rates.

13 “(G) TRANSITION RULE.—

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

20 “(I) the product of such rate for
21 such month determined without re-
22 gard to this subparagraph, multiplied
23 by the applicable percentage, and

24 “(II) the product of the rate de-
25 termined under the rules of section

1 302(b)(5)(B)(ii)(II) (as in effect for
2 plan years beginning in 2006), multi-
3 plied by a percentage equal to 100
4 percent minus the applicable percent-
5 age.

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

11 “(3) MORTALITY TABLES.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraphs (C) and (D), the mortality table
14 used in determining any present value or mak-
15 ing any computation under this section shall be
16 the RP-2000 Combined Mortality Table, using
17 Scale AA, as published by the Society of Actu-
18 aries, as in effect on the date of the enactment
19 of the Defined Benefit Security Act of 2005
20 and as revised from time to time under sub-
21 paragraph (B).

22 “(B) PERIODIC REVISION.—The Secretary
23 of the Treasury shall (at least every 10 years)
24 make revisions in any table in effect under sub-
25 paragraph (A) to reflect the actual experience

1 of pension plans and projected trends in such
2 experience.

3 “(C) SUBSTITUTE MORTALITY TABLE.—

4 “(i) IN GENERAL.—Upon request by
5 the plan sponsor and approval by the Sec-
6 retary of the Treasury, a mortality table
7 which meets the requirements of clause (ii)
8 shall be used in determining any present
9 value or making any computation under
10 this section during the 10-consecutive plan
11 year period specified in the request. A
12 mortality table described in this clause
13 shall cease to be in effect if the plan actu-
14 ary determines at any time that such table
15 does not meet the requirements of sub-
16 clauses (I) and (II) of clause (ii).

17 “(ii) REQUIREMENTS.—A mortality
18 table meets the requirements of this clause
19 if the Secretary of the Treasury determines
20 that—

21 “(I) such table reflects the actual
22 experience of the pension plan and
23 projected trends in such experience,
24 and

1 “(II) such table is significantly
2 different from the table described in
3 subparagraph (A).

4 “(iii) DEADLINE FOR DISPOSITION OF
5 APPLICATION.—Any mortality table sub-
6 mitted to the Secretary of the Treasury for
7 approval under this subparagraph shall be
8 treated as in effect for the first plan year
9 in the 10-year period described in clause
10 (i) unless the Secretary of the Treasury,
11 during the 180-day period beginning on
12 the date of such submission, disapproves of
13 such table and provides the reasons that
14 such table fails to meet the requirements
15 of clause (ii).

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

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

1 shall establish separate tables for individ-
2 uals whose disabilities occur in plan years
3 beginning before January 1, 1995, and for
4 individuals whose disabilities occur in plan
5 years beginning on or after 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 of the Treasury shall (at least every
17 10 years) make revisions in any table in ef-
18 fect under clause (i) to reflect the actual
19 experience of pension plans and projected
20 trends in such experience.

21 “(E) TRANSITION RULE.—Under regula-
22 tions of the Secretary of the Treasury, any dif-
23 ference in assumptions as set forth in the mor-
24 tality table specified in subparagraph (A) and
25 assumptions as set forth in the mortality table

1 described in section 302(d)(7)(C)(ii) (as in ef-
2 fect for plan years beginning in 2006) shall be
3 phased in ratably over the first period of 5 plan
4 years beginning in or after 2007 so as to be
5 fully effective for the fifth plan year.

6 “(4) PROBABILITY OF BENEFIT PAYMENTS IN
7 THE FORM OF LUMP SUMS OR OTHER OPTIONAL
8 FORMS.—

9 “(A) IN GENERAL.—For purposes of deter-
10 mining any present value or making any com-
11 putation under this section, there shall be taken
12 into account—

13 “(i) the probability that future benefit
14 payments under the plan will be made in
15 the form of optional forms of benefits pro-
16 vided under the plan (including lump sum
17 distributions, determined on the basis of
18 the plan’s experience and other related as-
19 sumptions), and

20 “(ii) any difference in the present
21 value of such future benefit payments re-
22 sulting from the use of actuarial assump-
23 tions, in determining benefit payments in
24 any such optional form of benefits, which

1 are different from those specified in this
2 subsection.

3 “(B) TRANSITION RULE.—Under regula-
4 tions of the Secretary of the Treasury, any dif-
5 ference in assumptions as set forth in subpara-
6 graph (A) and assumptions as set forth under
7 the plan for its last plan year beginning in
8 2006 shall be phased in ratably over the first
9 period of 5 plan years beginning in 2007 so as
10 to be fully effective for the fifth plan year.

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

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

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

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

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

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

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

18 “(1) FUNDING TARGET FOR PLANS IN AT-RISK
19 STATUS.—

20 “(A) IN GENERAL.—In any case in which
21 a plan is in at-risk status for a plan year, the
22 funding target of the plan for the plan year is
23 equal to the present value of all liabilities to
24 participants and their beneficiaries under the
25 plan for the plan year, as determined by using,

1 in addition to the actuarial assumptions de-
2 scribed in subsection (g), the supplemental ac-
3 tuarial assumptions described in subparagraph
4 (B).

5 “(B) SUPPLEMENTAL ACTUARIAL ASSUMP-
6 TIONS.—The actuarial assumptions used in de-
7 termining the valuation of the funding target
8 shall include an assumption that all partici-
9 pants who will be eligible to elect benefits dur-
10 ing the plan year and the 5 succeeding plan
11 years will elect benefits at such times and in
12 such forms as will result in the highest present
13 value of liabilities under subparagraph (A).

14 “(2) TARGET NORMAL COST OF AT-RISK
15 PLANS.—In any case in which a plan is in at-risk
16 status for a plan year, the target normal cost of the
17 plan for such plan year shall be equal to the present
18 value of all benefits which are expected to accrue or
19 be earned under the plan during the plan year, de-
20 termined under the actuarial assumptions used
21 under paragraph (1).

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

23 “(A) the at-risk target liability be less than
24 the target liability, as determined without re-
25 gard to this subsection, or

1 “(B) the at-risk target normal cost be less
2 than the target normal cost, as determined
3 without regard to this subsection.

4 “(4) DETERMINATION OF AT-RISK STATUS.—
5 For purposes of this subsection, a plan is in ‘at-risk
6 status’ for a plan year if the funding target attain-
7 ment percentage (determined without regard to sub-
8 section (e)(4) of the plan for the preceding plan year
9 was less than 60 percent.

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

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

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

24 “(ii) the transition percentage for
25 such plan year of the excess of the amount

1 determined under this subsection (without
 2 regard to this paragraph) over the amount
 3 determined under this section without re-
 4 gard to this subsection.

5 “(B) TRANSITION PERCENTAGE.—For
 6 purposes of subparagraph (A), the transition
 7 percentage shall be determined in accordance
 8 with 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 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
 10 TIONS.—

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

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

21 “(3) ACCELERATED QUARTERLY CONTRIBUTION
 22 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 of the Internal Revenue Code of 1986 for
17 the 1st month of such plan year), over

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

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

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

1 “(I) the required installment,
2 over

3 “(II) the amount (if any) of the
4 installment contributed to or under
5 the plan on or before the due date for
6 the installment.

7 “(ii) PERIOD OF UNDERPAYMENT.—
8 The period for which any interest is
9 charged under this paragraph with respect
10 to any portion of the underpayment shall
11 run from the due date for the installment
12 to the date on which such portion is con-
13 tributed to or under the plan.

14 “(iii) ORDER OF CREDITING CON-
15 TRIBUTIONS.—For purposes of clause
16 (i)(II), contributions shall be credited
17 against unpaid required installments in the
18 order in which such installments are re-
19 quired to be paid.

20 “(C) NUMBER OF REQUIRED INSTALL-
21 MENTS; DUE DATES.—For purposes of this
22 paragraph—

23 “(i) PAYABLE IN 4 INSTALLMENTS.—
24 There shall be 4 required installments for
25 each plan year.

1 (without regard to any waiver under
2 section 302(c)) to the plan for the
3 preceding plan year.

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

7 “(E) FISCAL YEARS AND SHORT YEARS.—

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

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

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

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

1 ment is less than the liquidity shortfall (wheth-
2 er or not such liquidity shortfall exceeds the
3 amount of such installment required to be paid
4 but for this paragraph).

5 “(B) PLANS TO WHICH PARAGRAPH AP-
6 PLIES.—This paragraph shall apply to a plan
7 (other than a plan that would be described in
8 subsection (g)(2)(B) if ‘100’ were substituted
9 for ‘500’ therein) which—

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

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

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

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

1 attainment percentage of the plan for the plan
2 year (taking into account the expected increase
3 in funding target due to benefits accruing or
4 earned during the plan year) to 100 percent.

5 “(E) DEFINITIONS.—For purposes of this
6 subparagraph:

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

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

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

17 “(ii) BASE AMOUNT.—

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

1 “(II) SPECIAL RULE.—If the
2 amount determined under subclause
3 (I) exceeds an amount equal to 2
4 times the sum of the adjusted dis-
5 bursements from the plan for the 36
6 months ending on the last day of the
7 quarter and an enrolled actuary cer-
8 tifies to the satisfaction of the Sec-
9 retary of the Treasury that such ex-
10 cess is the result of nonrecurring cir-
11 cumstances, the base amount with re-
12 spect to such quarter shall be deter-
13 mined without regard to amounts re-
14 lated to those nonrecurring cir-
15 cumstances.

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

22 “(iv) ADJUSTED DISBURSEMENTS.—
23 The term ‘adjusted disbursements’ means
24 disbursements from the plan reduced by
25 the product of—

1 “(I) the plan’s funding target at-
2 tainment percentage for the plan year,
3 and

4 “(II) the sum of the purchases of
5 annuities, payments of single sums,
6 and such other disbursements as the
7 Secretary of the Treasury shall pro-
8 vide in regulations.

9 “(v) LIQUID ASSETS.—The term ‘liq-
10 uid assets’ means cash, marketable securi-
11 ties, and such other assets as specified by
12 the Secretary of the Treasury in regula-
13 tions.

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

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

22 “(k) IMPOSITION OF LIEN WHERE FAILURE TO
23 MAKE REQUIRED CONTRIBUTIONS.—

24 “(1) IN GENERAL.—In the case of a plan cov-
25 ered under section 4021 of this Act and to which

1 this subsection applies (as provided under paragraph
2 (2)), if—

3 “(A) any person fails to make a contribu-
4 tion payment required by section 302 and this
5 section before the due date for such payment,
6 and

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

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

19 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
20 This subsection shall apply to a defined benefit plan
21 which is a single-employer plan for any plan year for
22 which the funding target attainment percentage (as
23 defined in subsection (d)(2)) of such plan is less
24 than 100 percent.

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

7 “(4) NOTICE OF FAILURE; LIEN.—

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

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

22 “(C) CERTAIN RULES TO APPLY.—Any
23 amount with respect to which a lien is imposed
24 under paragraph (1) shall be treated as taxes
25 due and owing the United States and rules

1 similar to the rules of subsections (c), (d), and
2 (e) of section 4068 shall apply with respect to
3 a lien imposed by subsection (a) and the
4 amount with respect to such lien.

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

12 “(6) DEFINITIONS.—For purposes of this
13 subsection—

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

20 “(B) DUE DATE; REQUIRED INSTALL-
21 MENT.—The terms ‘due date’ and ‘required in-
22 stallment’ have the meanings given such terms
23 by subsection (j), except that in the case of a
24 payment other than a required installment, the

1 due date shall be the date such payment is re-
2 quired to be made under section 303.

3 “(C) CONTROLLED GROUP.—The term
4 ‘controlled group’ means any group treated as
5 a single employer under subsections (b), (c),
6 (m), and (o) of section 414 of the Internal Rev-
7 enue Code of 1986.

8 “(I) QUALIFIED TRANSFERS TO HEALTH BENEFIT
9 ACCOUNTS.—In the case of a qualified transfer (as de-
10 fined in section 420 of the Internal Revenue Code of
11 1986), any assets so transferred shall not, for purposes
12 of this section, be treated as assets in the plan.”

13 (b) CLERICAL AMENDMENT.—The table of sections
14 in section 1 of such Act (as amended by section 101) is
15 amended by inserting after the item relating to section
16 302 the following new item:

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

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

20 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EM-**
21 **PLOYER PLANS.**

22 (a) LIMITS ON BENEFITS AND BENEFIT ACCRU-
23 ALS.—

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

4 “(g) FUNDING-BASED LIMITS ON BENEFITS AND
5 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER
6 PLANS.—

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

9 “(A) IN GENERAL.—Except as provided in
10 paragraph (4), no amendment to a single-em-
11 ployer plan which has the effect of increasing li-
12 abilities of the plan by reason of increases in
13 benefits, establishment of new benefits, chang-
14 ing the rate of benefit accrual, or changing the
15 rate at which benefits become nonforfeitable to
16 the plan may take effect during any plan year
17 if the funding target attainment percentage as
18 of the valuation date of the plan for such plan
19 year is—

20 “(i) less than 80 percent, or

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

23 For purposes of this subparagraph, any in-
24 crease in benefits under the plan by reason of
25 an increase in the benefit rate provided under

1 the plan or on the basis of an increase in com-
2 pensation shall be treated as affected by plan
3 amendment.

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

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

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

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

1 if the rate of such increase is not in excess of
2 the contemporaneous rate of increase in average
3 wages of participants covered by the amend-
4 ment.

5 “(2) FUNDING-BASED LIMITATION ON CERTAIN
6 FORMS OF DISTRIBUTION.—

7 “(A) IN GENERAL.—Except as provided in
8 this paragraph and paragraph (4), a single-em-
9 ployer plan shall provide that, in any case in
10 which the plan’s funding target attainment per-
11 centage as of the valuation date of the plan for
12 a plan year is less than 80 percent, the plan
13 may not after such date pay any portion of a
14 prohibited payment (as defined in subsection
15 (e)(2)).

16 “(B) SINGLE LIFETIME EXCEPTION.—If
17 subparagraph (A) applies to a plan for 1 or
18 more plan years, a participant, a beneficiary
19 with respect to a deceased participant to whom
20 this subparagraph did not apply, or an alter-
21 nate payee (within the meaning of subsection
22 (d)(3)(K)) may elect in only one of such years
23 not to have subparagraph (A) apply to a pro-
24 hibited payment to the extent such payment
25 does not exceed an amount equal to the funding

1 target attainment percentage for the plan year
2 multiplied by the amount of the prohibited pay-
3 ment which would have been made under the
4 plan without regard to this subparagraph.

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

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

14 “(A) IN GENERAL.—Except as provided in
15 paragraph (4), a single-employer plan shall pro-
16 vide that all future benefit accruals under the
17 plan shall cease during a severe funding short-
18 fall period, but only to the extent the cessation
19 of such accruals would have been permitted
20 under section 204(g) if the cessation had been
21 implemented by a plan amendment adopted im-
22 mediately before the severe funding shortfall pe-
23 riod.

1 “(B) SEVERE FUNDING SHORTFALL PE-
2 RIOD.—For purposes of subparagraph (A), the
3 term ‘severe funding shortfall period’ means—

4 “(i) in the case of a plan funding tar-
5 get attainment percentage of which as of
6 the valuation date of the plan for any plan
7 year is less than 60 percent, the period—

8 “(I) beginning on the 1st day of
9 the succeeding plan year, and

10 “(II) ending on the date the
11 plan’s enrolled actuary certifies that
12 the plan’s funding target attainment
13 percentage is at least 60 percent, and

14 “(ii) any portion of any period the
15 plan sponsor is in bankruptcy which is de-
16 scribed in subparagraph (D).

17 “(C) OPPORTUNITY FOR INCREASED
18 FUNDING.—For purposes of subparagraph
19 (B)(i), a plan shall not be treated as described
20 in such subparagraph for a plan year if the
21 plan’s enrolled actuary certifies that the plan
22 sponsor has before the end of the plan year
23 contributed (in addition to any minimum re-
24 quired contribution under section 303) the
25 amount sufficient to result in a funding target

1 attainment percentage as of the valuation date
2 for the plan year of 60 percent.

3 “(D) SPECIAL RULES FOR BANKRUPTCY.—

4 “(i) IN GENERAL.—For purposes of
5 subparagraph (A)(ii), the severe funding
6 shortfall period in the case of any period a
7 plan sponsor in bankruptcy shall include
8 any portion of such period after the first
9 date on which the plan sponsor fails to
10 make a required contribution under this
11 part on or before the due date for such
12 contribution.

13 “(ii) EXCEPTION WHERE FUNDING
14 PERCENTAGE AT LEAST 80 PERCENT.—
15 Clause (i) shall not apply to any failure
16 during a plan year if the plan’s enrolled
17 actuary has certified before the date of the
18 failure that, as of the valuation date for
19 the plan year, the plan’s funding target at-
20 tainment percentage is at least 80 percent.

21 “(iii) SATISFACTION OF REQUIRE-
22 MENT BEFORE CLOSE OF PLAN YEAR.—If,
23 before the close of the plan year described
24 in clause (ii), the plan’s enrolled actuary
25 certifies that, as of the valuation date for

1 the plan year, the funding target attain-
2 ment percentage of the plan is at least 80
3 percent, this subparagraph shall be applied
4 as if the requirements of clause (ii) were
5 met for the plan year and the plan shall,
6 under rules prescribed by the Secretary of
7 the Treasury, restore any accruals not
8 made during the severe funding shortfall
9 period in effect before the application of
10 this clause.

11 “(iv) COORDINATION WITH BANK-
12 RUPTCY LAWS.—Nothing in this subpara-
13 graph shall affect the rights of any author-
14 ized representative in bankruptcy under
15 section 1113 or 1114 of title 11, United
16 States Code.

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

1 “(A) such limitations shall not apply to
2 any amendment, prohibited payment, or accrual
3 with respect to such plan, but

4 “(B) the plan sponsor shall contribute (in
5 addition to any minimum required contribution
6 under section 303) the amount sufficient to re-
7 sult in a funding target attainment percentage
8 (as of the valuation date for the plan year in
9 which any such limitation would otherwise
10 apply) equal to the percentage necessary to pre-
11 vent the limitation from applying.

12 “(5) RULES RELATING TO REQUIRED CON-
13 TRIBUTIONS.—

14 “(A) SECURITY MAY BE PROVIDED.—

15 “(i) IN GENERAL.—For purposes of
16 this subsection, the funding target attain-
17 ment percentage shall be determined by
18 treating as an asset of the plan any secu-
19 rity provided by a plan sponsor in a form
20 meeting the requirements of clause (ii) .

21 “(ii) FORM OF SECURITY.—The secu-
22 rity required under clause (i) shall consist
23 of—

24 “(I) a bond issued by a corporate
25 surety company that is an acceptable

1 required contribution which a plan sponsor fails
2 to make under paragraph (3)(C) or (4)(B) for
3 any plan year shall be treated as an unpaid
4 minimum required contribution for purposes of
5 subsection (j) and (k) of section 303 and for
6 purposes of section 4971 of the Internal Rev-
7 enue Code of 1986.

8 “(6) NEW PLANS.—Paragraphs (1) and (3)
9 shall not apply to a plan for the first 5 plan years
10 of the plan. For purposes of this paragraph, the ref-
11 erence in this paragraph to a plan shall include a
12 reference to any predecessor plan.

13 “(7) PRESUMED UNDERFUNDING FOR PUR-
14 POSES OF BENEFIT LIMITATIONS BASED ON PRIOR
15 YEAR’S FUNDING STATUS.—

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

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

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

18 “(8) TREATMENT OF PLAN AS OF CLOSE OF
19 PROHIBITED OR CESSATION PERIOD.—For purposes
20 of applying this part—

21 “(A) OPERATION OF PLAN AFTER PE-
22 RIOD.—Unless the plan provides otherwise, a
23 plan shall be treated as having adopted an
24 amendment which, effective as of the day fol-
25 lowing the close of a period of limitation of pay-

1 ment or accrual of benefits under paragraph (2)
2 or (3), provides for the resumption for periods
3 on or after such day of the payment or accrual
4 of such benefits.

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

10 “(9) FUNDING TARGET ATTAINMENT PERCENT-
11 AGE.—For purposes of this subsection, the term
12 ‘funding target attainment percentage’ has the same
13 meaning given such term by section 303(d)(2).”.

14 (2) NOTICE REQUIREMENT.—

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

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

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

21 “(j) NOTICE OF FUNDING-BASED LIMITATION ON
22 CERTAIN FORMS OF DISTRIBUTION.—The plan adminis-
23 trator of a single-employer plan shall provide a written no-
24 tice to plan participants and beneficiaries within 30
25 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 funding
8 target attainment percentage for the plan year
9 is less than 60 percent (or, if earlier, the date
10 such percentage is deemed to be less than 60
11 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.”.

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

20 (b) SPECIAL RULE FOR PLAN AMENDMENTS.—A
21 plan shall not fail to meet the requirements of section
22 204(g) of the Employee Retirement Income Security Act
23 of 1974 or section 411(d)(6) of the Internal Revenue Code
24 of 1986 solely by reason of the adoption by the plan of

1 an amendment necessary to meet the requirements of the
2 amendments made by this section.

3 (c) EFFECTIVE DATES.—

4 (1) BENEFIT RESTRICTIONS.—Except as pro-
5 vided in paragraph (2)—

6 (A) IN GENERAL.—Subject to subpara-
7 graph (B), the amendments made by subsection
8 (b) shall apply with respect to plan years begin-
9 ning after 2006.

10 (B) BENEFIT INCREASES.—Section
11 201(g)(1) of the Employee Retirement Income
12 Security Act of 1974 (as added by subsection
13 (a)) shall apply with respect to plan years be-
14 ginning after 2007.

15 (2) COLLECTIVE BARGAINING EXCEPTION.—In
16 the case of a plan maintained pursuant to 1 or more
17 collective bargaining agreements between employee
18 representatives and 1 or more employers ratified
19 January 1, 2007, the amendments made by this sec-
20 tion shall not apply to plan years beginning before
21 the earlier of—

22 (A) the later of—

23 (i) the date on which the last collec-
24 tive bargaining agreement relating to the
25 plan terminates (determined without re-

1 gard to any extension thereof agreed to
2 after the date of the enactment of this
3 Act), or

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

8 (B) January 1, 2010.

9 For purposes of subparagraph (A)(i), any plan
10 amendment made pursuant to a collective bargaining
11 agreement relating to the plan which amends the
12 plan solely to conform to any requirement added by
13 this section shall not be treated as a termination of
14 such collective bargaining agreement.

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

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

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

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

23 “(i) a statement as to whether—

24 “(I) in the case of a single-em-
25 ployer plan, the plan’s funding target

1 attainment percentage (as defined in
2 section 303(d)(2)), or

3 “(II) in the case of a multiem-
4 ployer plan, the plan’s funded percent-
5 age (as defined in section 305(d)(2)),
6 is at least 100 percent (and, if not, the ac-
7 tual percentage);”;

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

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

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

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

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

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

24 (5) in section 203(a)(3)(C), by striking “section
25 302(c)(8)” and inserting “section 302(d)(2)”;

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

3 (7) in section 204(i)(2)(B), by striking “section
4 302(c)(8)” and inserting “section 302(d)(2)”;

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

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

14 (10) in section 206(e)(1), by striking “section
15 302(d)” and inserting “section 303(j)(4)”, and by
16 striking “section 302(e)(5)” and inserting “section
17 303(j)(4)(E)(i)”;

18 (11) in section 206(e)(3), by striking “section
19 302(e) by reason of paragraph (5)(A) thereof” and
20 inserting “section 303(j)(3) by reason of section
21 303(j)(4)(A)”;

22 (12) in sections 101(e)(3), 403(c)(1), and
23 408(b)(13), by striking “American Jobs Creation
24 Act of 2004” and inserting “Pension Protection Act
25 of 2005”.

1 (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—

2 Title IV of such Act is amended—

3 (1) in section 4001(a)(13) (29 U.S.C.
4 1301(a)(13)), by striking “302(c)(11)(A)” and in-
5 serting “302(b)(1)”, by striking “412(c)(11)(A)”
6 and inserting “412(b)(1)”, by striking
7 “302(e)(11)(B)” and inserting “302(b)(2)”, and by
8 striking “412(c)(11)(B)” and inserting “412(b)(2)”;

9 (2) in section 4003(e)(1) (29 U.S.C.
10 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and
11 inserting “303(k)(1)(A) and (B)”, and by striking
12 “412(n)(1)(A) and (B)” and inserting
13 “430(k)(1)(A) and (B)”;

14 (3) in section 4010(b)(2) (29 U.S.C.
15 1310(b)(2)), by striking “302(f)(1)(A) and (B)” and
16 inserting “303(k)(1)(A) and (B)”, and by striking
17 “412(n)(1)(A) and (B)” and inserting
18 “430(k)(1)(A) and (B)”;

19 (4) in section 4011(b) (29 U.S.C. 1311(b)), by
20 striking “to which” and all that follows and insert-
21 ing “for any plan year for which the plan’s funding
22 target attainment percentage (as defined in section
23 303(d)(2)) is at least 90 percent.”;

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

4 “(1)(A) in the case of a single-employer plan,
5 the sum of the shortfall amortization charge (within
6 the meaning of section 303(c)(1) of this Act and
7 430(c)(1) of the Internal Revenue Code of 1986)
8 with respect to the plan (if any) for the plan year
9 in which the termination date occurs, plus the aggre-
10 gate total of shortfall amortization installments (if
11 any) determined for succeeding plan years under
12 section 303(c)(2) of this Act and section 430(c)(2)
13 of such Code (which, for purposes of this subpara-
14 graph, shall include any increase in such sum which
15 would result if all applications for waivers of the
16 minimum funding standard under section 302(e) of
17 this Act and section 412(c) of such Code which are
18 pending with respect to such plan were denied and
19 if no additional contributions (other than those al-
20 ready made by the termination date) were made for
21 the plan year in which the termination date occurs
22 or for any previous plan year), or

23 “(B) in the case of a multiemployer plan, the
24 outstanding balance of the accumulated funding de-
25 ficiencies (within the meaning of section 304(a)(2)

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

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

1 “(B) in the case of a multiemployer plan, the
2 outstanding balance of the amount of waived fund-
3 ing deficiencies of the plan waived before such date
4 under section 302(c) of this Act or section 412(c) of
5 such Code (if any), and

6 “(3) in the case of a multiemployer plan, the
7 outstanding balance of the amount of decreases in
8 the minimum funding standard allowed before such
9 date under section 304(d) of this Act or section
10 431(d) of such Code (if any);”;

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

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

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

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

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

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

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

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to plan years beginning after 2005.

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

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

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

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

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

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

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

8 “(A) in the case of a defined benefit plan
9 which is 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.—In
7 the case of a single-employer plan, if the employer
8 referred to in paragraph (1) is a member of a con-
9 trolled group, each member of such group shall be
10 jointly and severally liable for payment of such con-
11 tribution or required installment.

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

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

16 “(A) IN GENERAL.—If—

17 “(i) an employer is (or in the case of
18 a multiemployer plan, 10 percent or more
19 of the number of employers contributing to
20 or under the plan are) unable to satisfy the
21 minimum funding standard for a plan year
22 without temporary substantial business
23 hardship (substantial business hardship in
24 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) and
23 in the case of a multiemployer plan, to each em-
24 ployer required to contribute to the plan under
25 subsection (b)(1). Such notice shall include a

1 description of the extent to which the plan is
2 funded for benefits which are guaranteed under
3 title IV and for benefit liabilities.

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

9 “(7) RESTRICTION ON PLAN AMENDMENTS.—

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

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

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

7 “(ii) only repeals an amendment de-
8 scribed in subsection (e)(2), or

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

13 “(e) MISCELLANEOUS RULES.—For purposes of this
14 section—

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

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

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

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

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

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

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

1 waiver under subsection (d)(1) is unavailable or in-
2 adequate.

3 “(3) CERTAIN INSURANCE CONTRACT PLANS.—

4 A plan is described in this paragraph if—

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

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

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

22 “(D) premiums payable for the plan year,
23 and all prior plan years, under such contracts
24 have been paid before lapse or there is rein-
25 statement of the policy,

1 **“PART III—RULES RELATING TO MINIMUM**
2 **FUNDING STANDARDS AND BENEFIT LIMITATION**

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

“431. Minimum funding standards for multiemployer plans.

3 **“SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-**
4 **EMPLOYER DEFINED BENEFIT PLANS.**

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

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

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

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

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

22 “(2) in any case in which the value of plan as-
23 sets of the plan (as reduced under subsection (f)(4))
24 equals or exceeds the funding target of the plan for

1 the plan year, the target normal cost of the plan for
2 the plan year reduced by any such excess.

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

14 “(c) SHORTFALL AMORTIZATION CHARGE.—

15 “(1) IN GENERAL.—For purposes of this sec-
16 tion, the shortfall amortization charge for a plan for
17 any plan year is the aggregate total of the shortfall
18 amortization installments for such plan year with re-
19 spect to the shortfall amortization bases for such
20 plan year and each of the 9 preceding plan years.

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

23 “(A) DETERMINATION.—The plan sponsor
24 shall determine the amounts necessary to amor-
25 tize the shortfall amortization base of the plan

1 for any plan year in level annual installments
2 over the 10-plan-year period beginning with
3 such plan year.

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

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

18 “(3) SHORTFALL AMORTIZATION BASE.—For
19 purposes of this section, the shortfall amortization
20 base of a plan for a plan year is the excess (if any)
21 of—

22 “(A) the funding shortfall of such plan for
23 such plan year, over

24 “(B) the present value (determined using
25 the segment rates determined under subpara-

1 graph (C) of subsection (h)(2), applied under
2 rules similar to the rules of subparagraph (B)
3 of subsection (h)(2)) of the aggregate total of
4 the shortfall amortization installments and
5 waiver amortization installments which have
6 been determined for such plan year and any
7 succeeding plan year with respect to the short-
8 fall amortization bases and waiver amortization
9 bases of the plan for any plan year preceding
10 such plan year.

11 In any case in which the value of plan assets of the
12 plan is equal to or greater than the funding target
13 of the plan for the plan year, the shortfall amortiza-
14 tion base of the plan for such plan year shall be
15 zero.

16 “(4) FUNDING SHORTFALL.—

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

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

23 “(ii) the value of plan assets of the
24 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 purposes of
4 paragraph (3), in the case of a plan to which
5 section 412(l) of this Act (as in effect on the
6 day before the date of the enactment of the De-
7 fined Benefit Security Act of 2005) did not
8 apply for the plan year beginning in 2006, sub-
9 paragraph (A) shall be applied to plan years be-
10 ginning after 2006 and before 2016 by sub-
11 stituting for the amount described in subpara-
12 graph (A)(i) the applicable percentage of the
13 funding target of the plan for the plan year de-
14 termined under the following table:

In the case of a plan year beginning in calendar year:	The appli- cable per- centage is:
2007	91 percent
2008	92 percent
2009	93 percent
2010	94 percent
2011	95 percent
2012	96 percent
2013	97 percent
2014	98 percent
2015	99 percent.

15 “(5) EARLY DEEMED AMORTIZATION UPON AT-
16 TAINMENT OF FUNDING TARGET.—In any case in
17 which the funding shortfall of a plan for a plan year
18 is zero, for purposes of determining the shortfall am-
19 ortization charge for such plan year and succeeding
20 plan years, the shortfall amortization bases for all

1 preceding plan years (and all shortfall amortization
2 installments determined with respect to such bases)
3 shall be reduced to zero.

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

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

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

15 “(A) the value of plan assets for the plan
16 year, bears to

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

20 “(e) WAIVER AMORTIZATION CHARGE.—

21 “(1) DETERMINATION OF WAIVER AMORTIZA-
22 TION CHARGE.—The waiver amortization charge (if
23 any) for a plan for any plan year is the aggregate
24 total of the waiver amortization installments for

1 such plan year with respect to the waiver amortiza-
2 tion bases for each of the 5 preceding plan years.

3 “(2) WAIVER AMORTIZATION INSTALLMENT.—
4 For purposes of paragraph (1)—

5 “(A) DETERMINATION.—The plan sponsor
6 shall determine the amounts necessary to amor-
7 tize the waiver amortization base of the plan for
8 any plan year in level annual installments over
9 a period of 5 plan years beginning with the suc-
10 ceeding plan year.

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

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

23 “(4) WAIVER AMORTIZATION BASE.—The waiv-
24 er amortization base of a plan for a plan year is the

1 amount of the waived funding deficiency (if any) for
2 such plan year under section 412(d).

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 waiver am-
7 ortization charge for such plan year and succeeding
8 plan years, the waiver amortization base for all pre-
9 ceding plan years shall be reduced to zero.

10 “(f) USE OF PREFUNDING BALANCES TO SATISFY
11 MINIMUM REQUIRED CONTRIBUTIONS.—

12 “(1) IN GENERAL.—A plan sponsor may credit
13 any amount of a plan’s prefunding balance for a
14 plan year against the minimum required contribu-
15 tion for the plan year and the amount of the con-
16 tributions an employer is required to make under
17 section 412(c) for the plan year shall be reduced by
18 the amount so credited. Any such amount shall be
19 credited on the first day of the plan year.

20 “(2) PREFUNDING BALANCE.—

21 “(A) BEGINNING BALANCE.—The begin-
22 ning balance of a prefunding balance main-
23 tained by a plan shall be zero, except that if a
24 plan was in effect for a plan year beginning in
25 2006 and had a positive balance in the funding

1 standard account under section 412(c) (as in
2 effect for such plan year) as of the end of such
3 plan year, the beginning balance for the plan
4 for its first plan year beginning after 2006 shall
5 be such positive balance.

6 “(B) INCREASES.—

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

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

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

16 “(ii) ADJUSTMENTS FOR INTEREST.—

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

1 used to satisfy the minimum required con-
2 tribution.

3 “(iii) CERTAIN CONTRIBUTIONS DIS-
4 REGARDED.—Any contribution which is re-
5 quired to be made under section 436 in ad-
6 dition to any contribution required under
7 this section shall not be taken into account
8 for purposes of clause (i).

9 “(C) DECREASES.—As of the first day of
10 each plan year after 2007, the prefunding bal-
11 ance of a plan shall be decreased (but not below
12 zero) by the amount of the balance credited
13 under paragraph (1) against the minimum re-
14 quired contribution of the plan for the pre-
15 ceding plan year.

16 “(D) ADJUSTMENTS FOR INVESTMENT EX-
17 PERIENCE.—In determining the prefunding bal-
18 ance of a plan as of the first day of the plan
19 year, the plan sponsor shall, in accordance with
20 regulations prescribed by the Secretary of the
21 Treasury, adjust such balance to reflect the
22 rate of net gain or loss with respect to plan as-
23 sets for the preceding plan year. Notwith-
24 standing subsection (g)(3), such rate of net
25 gain or loss shall be determined on the basis of

1 fair market value and shall properly take into
2 account, in accordance with such regulations,
3 all contributions, distributions, and other plan
4 payments made during such period.

5 “(3) LIMITATION FOR UNDERFUNDED PLANS.—

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

8 “(i) the value of plan assets for the
9 preceding plan year, bears to

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

13 is less than 80 percent, the preceding provisions
14 of this subsection shall not apply unless employ-
15 ers liable for contributions to the plan under
16 section 412(c) make contributions to the plan
17 for the plan year in an aggregate amount not
18 less than the amount determined under sub-
19 paragraph (B). Any contribution required by
20 this subparagraph may not be reduced by any
21 credit otherwise allowable under paragraph (1).

22 “(B) APPLICABLE AMOUNT.—The amount
23 determined under this subparagraph for any
24 plan year is the greater of—

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

3 “(ii) 25 percent of the minimum re-
4 quired contribution under subsection (a)
5 for the plan year without regard to this
6 subsection.

7 “(4) REDUCTION IN VALUE OF ASSETS.—Solely
8 for purposes of applying subsections (a)(2) and
9 (c)(4)(A)(ii) in determining the minimum required
10 contribution under this section, the value of the plan
11 assets otherwise determined without regard to this
12 paragraph shall be reduced by the amount of the
13 prefunding balance under this subsection.

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

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

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

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

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

3 “(B) EXCEPTION FOR SMALL PLANS.—If,
4 on each day during the preceding plan year, a
5 plan had 500 or fewer participants, the plan
6 may designate any day during the plan year as
7 its valuation date for such plan year and suc-
8 ceeding plan years. For purposes of this sub-
9 paragraph, all defined benefit plans (other than
10 multiemployer plans) maintained by the same
11 employer (or any member of such employer’s
12 controlled group) shall be treated as 1 plan, but
13 only employees of such employer or member
14 shall be taken into account.

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

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

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

5 “(3) AUTHORIZATION OF USE OF ACTUARIAL
6 VALUE.—For purposes of this section, the value of
7 plan assets shall be determined on the basis of any
8 reasonable actuarial method of valuation which takes
9 into account fair market value and which is per-
10 mitted under regulations prescribed by the Secretary
11 of the Treasury, except that—

12 “(A) any such method providing for aver-
13 aging of fair market values may not provide for
14 averaging of such values over more than the 3
15 most recent plan years preceding the current
16 plan year, and

17 “(B) any such method may not result in a
18 determination of the value of plan assets which,
19 at any time, is lower than 90 percent or greater
20 than 110 percent of the fair market value of
21 such assets at such time.

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

24 “(A) CONTRIBUTIONS FOR PRIOR PLAN
25 YEARS TAKEN INTO ACCOUNT.—For purposes

1 of determining the value of plan assets for any
2 current plan year, in any case in which a con-
3 tribution properly allocable to amounts owed for
4 a preceding plan year is made on or after the
5 valuation date of the plan for such current plan
6 year, such contribution shall be taken into ac-
7 count, except that any such contribution made
8 during any such current plan year beginning
9 after 2007 shall be taken into account only in
10 an amount equal to its present value (deter-
11 mined using the effective rate of interest for the
12 plan for the preceding plan year) as of the valu-
13 ation date of the plan for such current plan
14 year.

15 “(B) CONTRIBUTIONS FOR CURRENT PLAN
16 YEAR DISREGARDED.—For purposes of deter-
17 mining the value of plan assets for any current
18 plan year, contributions which are properly allo-
19 cable to amounts owed for such plan year shall
20 not be taken into account, and, in the case of
21 any such contribution made before the valuation
22 date of the plan for such plan year, such value
23 of plan assets shall be reduced for interest on
24 such amount determined using the effective rate
25 of interest of the plan for the preceding plan

1 year for the period beginning when such pay-
2 ment was made and ending on the valuation
3 date of the plan.

4 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

9 “(A) each of which is reasonable (taking
10 into account the experience of the plan and rea-
11 sonable expectations), and

12 “(B) which, in combination, offer the actu-
13 ary’s best estimate of anticipated experience
14 under the plan.

15 “(2) INTEREST RATES.—

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

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

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

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

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

23 “(C) SEGMENT RATES.—For purposes of
24 this paragraph—

1 “(i) FIRST SEGMENT RATE.—The
2 term ‘first 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 for such month on the basis of
6 the corporate bond yield curve for such
7 month, taking into account only that por-
8 tion of such yield curve which is based on
9 bonds maturing during the 5-year period
10 commencing with such month.

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

22 “(iii) THIRD SEGMENT RATE.—The
23 term ‘third segment rate’ means, with re-
24 spect to any month, the single rate of in-
25 terest which shall be determined by the

1 Secretary for such month on the basis of
2 the corporate bond yield curve for such
3 month, taking into account only that por-
4 tion of such yield curve which is based on
5 bonds maturing during periods beginning
6 after the period described in clause (ii).

7 “(D) CORPORATE BOND YIELD CURVE.—

8 For purposes of this paragraph—

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

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

24 “(E) APPLICABLE MONTH.—For purposes
25 of this paragraph, the term ‘applicable month’

1 means, with respect to any plan for any plan
2 year, the month which includes the valuation
3 date of such plan for such plan year or, at the
4 election of the plan administrator, any of the 4
5 months which precede such month. Any election
6 made under this subparagraph shall apply to
7 the plan year for which the election is made and
8 all succeeding plan years, unless the election is
9 revoked with the consent of the Secretary.

10 “(F) PUBLICATION REQUIREMENTS.—The
11 Secretary shall publish for each month the cor-
12 porate bond yield curve (and the corporate bond
13 yield curve reflecting the modification described
14 in section 417(e)(3)(B)(iii)(I) for such month
15 and each of the rates determined under sub-
16 paragraph (B) for such month. The Secretary
17 shall also publish a description of the method-
18 ology used to determine such yield curve and
19 such rates which is sufficiently detailed to en-
20 able plans to make reasonable projections re-
21 garding the yield curve and such rates for fu-
22 ture months based on the plan’s projection of
23 future interest rates.

24 “(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 Defined Benefit Security Act of 2005
7 and as revised from time to time under sub-
8 paragraph (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
25 any time that such table does not meet the

1 requirements of subclauses (I) and (II) of
2 clause (ii).

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

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

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

13 “(iii) DEADLINE FOR DISPOSITION OF
14 APPLICATION.—Any mortality table sub-
15 mitted to the Secretary for approval under
16 this subparagraph shall be treated as in ef-
17 fect for the first plan year in the 10-year
18 period described in clause (i) unless the
19 Secretary, during the 180-day period be-
20 ginning on the date of such submission,
21 disapproves of such table and provides the
22 reasons that such table fails to meet the
23 requirements of clause (ii).

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

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

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

1 the form of optional forms of benefits pro-
2 vided under the plan (including lump sum
3 distributions, determined on the basis of
4 the plan's experience and other related as-
5 sumptions), and

6 “(ii) any difference in the present
7 value of such future benefit payments re-
8 sulting from the use of actuarial assump-
9 tions, in determining benefit payments in
10 any such optional form of benefits, which
11 are different from those specified in this
12 subsection.

13 “(B) TRANSITION RULE.—Under regula-
14 tions of the Secretary, any difference in as-
15 sumptions as set forth in subparagraph (A) and
16 assumptions as set forth under the plan for its
17 last plan year beginning in 2006 shall be
18 phased in ratably over the first period of 5 plan
19 years beginning in 2007 so as to be fully effec-
20 tive for the fifth plan year.

21 “(5) APPROVAL OF LARGE CHANGES IN ACTU-
22 ARIAL ASSUMPTIONS.—

23 “(A) IN GENERAL.—No actuarial assump-
24 tion used to determine the funding target for a

1 plan to which this paragraph applies may be
2 changed without the approval of the Secretary.

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

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

19 “(ii) the change in assumptions (de-
20 termined after taking into account any
21 changes in interest rate and mortality
22 table) results in a decrease in the funding
23 shortfall of the plan for the current plan
24 year that exceeds \$50,000,000, or that ex-
25 ceeds \$5,000,000 and that is 5 percent or

1 more of the funding target of the plan be-
2 fore such change.

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

4 “(1) FUNDING TARGET FOR PLANS IN AT-RISK
5 STATUS.—

6 “(A) IN GENERAL.—In any case in which
7 a plan is in at-risk status for a plan year, the
8 funding target of the plan for the plan year is
9 equal to the present value of all liabilities to
10 participants and their beneficiaries under the
11 plan for the plan year, as determined by using,
12 in addition to the actuarial assumptions de-
13 scribed in subsection (g), the supplemental ac-
14 tuarial assumptions described in subparagraph
15 (B).

16 “(B) SUPPLEMENTAL ACTUARIAL ASSUMP-
17 TIONS.—The actuarial assumptions used in de-
18 termining the valuation of the funding target
19 shall include an assumption that all partici-
20 pants who will be eligible to elect benefits dur-
21 ing the plan year and the 5 succeeding plan
22 years will elect benefits at such times and in
23 such forms as will result in the highest present
24 value of liabilities under subparagraph (A).

1 “(2) TARGET NORMAL COST OF AT-RISK
2 PLANS.—In any case in which a plan is in at-risk
3 status for a plan year, the target normal cost of the
4 plan for such plan year shall be equal to the present
5 value of all benefits which are expected to accrue or
6 be earned under the plan during the plan year, de-
7 termined under the actuarial assumptions used
8 under paragraph (1).

9 “(3) MINIMUM AMOUNT.—In no event shall—
10 “(A) the at-risk target liability be less than
11 the target liability, as determined without re-
12 gard to this subsection, or

13 “(B) the at-risk target normal cost be less
14 than the target normal cost, as determined
15 without regard to this subsection.

16 “(4) DETERMINATION OF AT-RISK STATUS.—
17 For purposes of this subsection, a plan is in ‘at-risk
18 status’ for a plan year if the funding target attain-
19 ment percentage (determined without regard to sub-
20 section (e)(4) of the plan for the preceding plan year
21 was less than 60 percent.

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

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

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

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

18 “(B) TRANSITION PERCENTAGE.—For
 19 purposes of subparagraph (A), the transition
 20 percentage shall be determined in accordance
 21 with 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 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
2 TIONS.—

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

7 “(2) INTEREST.—Any payment required under
8 paragraph (1) for a plan year made after the valu-
9 ation date for such plan year shall be increased by
10 interest, for the period from the valuation date to
11 the payment date, at the effective rate of interest for
12 the plan for such plan year.

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

15 “(A) INTEREST PENALTY FOR FAILURE TO
16 MEET ACCELERATED QUARTERLY PAYMENT
17 SCHEDULE.—A plan shall make the required in-
18 stallments under this paragraph for a plan year
19 if the plan had a funding shortfall for the pre-
20 ceeding plan year. If the required installment is
21 not paid in full, then the minimum required
22 contribution for the plan year (as increased
23 under paragraph (2)) shall be further increased
24 by an amount equal to the interest on the
25 amount of the underpayment for the period of

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

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

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

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

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

13 “(I) the required installment,
14 over

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

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

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

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

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

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

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

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 (other than a plan that would be described in
20 subsection (g)(2)(B) if ‘100’ were substituted
21 for ‘500’ therein) which—

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

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

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

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

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

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

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

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

5 “(ii) BASE AMOUNT.—

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

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

1 amounts related to those nonrecurring
2 circumstances.

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

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

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

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

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

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 may
5 prescribe such regulations as are necessary to
6 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 cov-
10 ered under section 4021 of the Employee Retirement
11 Income Security Act of 1974 and to which this sub-
12 section applies (as provided under paragraph (2)),
13 if—

14 “(A) any person fails to make a contribu-
15 tion payment required by section 412 and this
16 section before the due date for such payment,
17 and

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

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

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

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

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

17 “(4) NOTICE OF FAILURE; LIEN.—

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

23 “(B) PERIOD OF LIEN.—The lien imposed
24 by paragraph (1) shall arise on the due date for
25 the required contribution payment and shall

1 continue until the last day of the first plan year
2 in which the plan ceases to be described in
3 paragraph (1)(B). Such lien shall continue to
4 run without regard to whether such plan con-
5 tinues to be described in paragraph (2) during
6 the period referred to in the preceding sentence.

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

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

23 “(6) DEFINITIONS.—For purposes of this
24 subsection—

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

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

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

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

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to plan years begin-
25 ning after 2006.

1 **SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EM-**
2 **PLOYER PLANS.**

3 (a) IN GENERAL.—Part III of subchapter D of chap-
4 ter 1 of the Internal Revenue Code of 1986 (relating to
5 rules relating to minimum funding standards) is amended
6 by adding at the end the following new subpart:

7 **“Subpart B—Limitations on Benefit Improvements**
8 **by Single-Employer Plans**

“Sec. 436. Funding-based limits on benefits and benefit accruals under
single-employer plans.

9 **“SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BEN-**
10 **EFIT ACCRUALS UNDER SINGLE-EMPLOYER**
11 **PLANS.**

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

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

24 “(A) less than 80 percent, or

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

3 For purposes of this paragraph, any increase in ben-
4 efits under the plan by reason of an increase in the
5 benefit rate provided under the plan or on the basis
6 of an increase in compensation shall be treated as
7 affected by plan amendment.

8 “(2) EXEMPTION.—Paragraph (1) shall cease
9 to apply with respect to any plan year, effective as
10 of the first date of the plan year (or if later, the ef-
11 fective date of the amendment), upon payment by
12 the plan sponsor of a contribution (in addition to
13 any minimum required contribution under section
14 303) equal to—

15 “(A) in the case of paragraph (1)(A), the
16 amount of the increase in the funding target of
17 the plan (under section 430) for the plan year
18 attributable to the amendment, and

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

22 “(3) EXCEPTION FOR CERTAIN BENEFIT IN-
23 CREASES.—Paragraph (1) shall not apply to any
24 amendment which provides for an increase in bene-
25 fits under a formula which is not based on a partici-

1 pant’s compensation, but only if the rate of such in-
2 crease is not in excess of the contemporaneous rate
3 of increase in average wages of participants covered
4 by the amendment.

5 “(b) FUNDING-BASED LIMITATION ON CERTAIN
6 FORMS OF DISTRIBUTION.—

7 “(1) IN GENERAL.—Except as provided in this
8 subsection and subsection (d), a single-employer
9 plan shall provide that, in any case in which the
10 plan’s funding target attainment percentage as of
11 the valuation date of the plan for a plan year is less
12 than 80 percent, the plan may not after such date
13 pay any portion of a prohibited payment (as defined
14 in section 206(e)(2) of the Employee Retirement In-
15 come Security Act of 1974).

16 “(2) SINGLE LIFETIME EXCEPTION.—If para-
17 graph (1) applies to a plan for 1 or more plan years,
18 a participant, a beneficiary with respect to a de-
19 ceased participant to whom this subparagraph did
20 not apply, or an alternate payee (within the meaning
21 of section 414(p)(8)) may elect in only one of such
22 years not to have paragraph (1) apply to a prohib-
23 ited payment to the extent such payment does not
24 exceed an amount equal to the funding target attain-
25 ment percentage for the plan year multiplied by the

1 amount of the prohibited payment which would have
2 been made under the plan without regard to this
3 subparagraph.

4 “(3) EXCEPTION.—Paragraph (1) shall not
5 apply to any plan for any plan year if the terms of
6 such plan (as in effect for the period beginning on
7 June 29, 2005, and ending with such plan year)
8 provide for no benefit accruals with respect to any
9 participant during such period.

10 “(c) LIMITATION ON BENEFIT ACCRUALS FOR PLANS
11 WITH SEVERE FUNDING SHORTFALLS.—

12 “(1) IN GENERAL.—Except as provided in sub-
13 section (d), a single-employer plan shall provide that
14 all future benefit accruals under the plan shall cease
15 during a severe funding shortfall period, but only to
16 the extent the cessation of such accruals would have
17 been permitted under section 411(d)(6) if the ces-
18 sation had been implemented by a plan amendment
19 adopted immediately before the severe funding short-
20 fall period.

21 “(2) SEVERE FUNDING SHORTFALL PERIOD.—
22 For purposes of paragraph (1), the term ‘severe
23 funding shortfall period’ means—

24 “(A) in the case of a plan funding target
25 attainment percentage of which as of the valu-

1 ation date of the plan for any plan year is less
2 than 60 percent, the period—

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

5 “(ii) ending on the date the plan’s en-
6 rolled actuary certifies that the plan’s
7 funding target attainment percentage is at
8 least 60 percent, and

9 “(B) any portion of any period the plan
10 sponsor is in bankruptcy which is described in
11 paragraph (4).

12 “(3) OPPORTUNITY FOR INCREASED FUND-
13 ING.—For purposes of paragraph (2)(A), a plan
14 shall not be treated as described in such paragraph
15 for a plan year if the plan’s enrolled actuary certifies
16 that the plan sponsor has before the end of the plan
17 year contributed (in addition to any minimum re-
18 quired contribution under section 430) the amount
19 sufficient to result in a funding target attainment
20 percentage as of the valuation date for the plan year
21 of 60 percent.

22 “(4) SPECIAL RULES FOR BANKRUPTCY.—

23 “(A) IN GENERAL.—For purposes of para-
24 graph (1)(B), the severe funding shortfall pe-
25 riod in the case of any period a plan sponsor in

1 bankruptcy shall include any portion of such
2 period after the first date on which the plan
3 sponsor fails to make a required contribution
4 under this part on or before the due date for
5 such contribution.

6 “(B) EXCEPTION WHERE FUNDING PER-
7 CENTAGE AT LEAST 80 PERCENT.—Subpara-
8 graph (A) shall not apply to any failure during
9 a plan year if the plan’s enrolled actuary has
10 certified before the date of the failure that, as
11 of the valuation date for the plan year, the
12 plan’s funding target attainment percentage is
13 at least 80 percent.

14 “(C) SATISFACTION OF REQUIREMENT BE-
15 FORE CLOSE OF PLAN YEAR.—If, before the
16 close of the plan year described in subpara-
17 graph (B), the plan’s enrolled actuary certifies
18 that, as of the valuation date for the plan year,
19 the funding target attainment percentage of the
20 plan is at least 80 percent, this subparagraph
21 shall be applied as if the requirements of sub-
22 paragraph (B) were met for the plan year and
23 the plan shall, under rules prescribed by the
24 Secretary, restore any accruals not made during

1 the severe funding shortfall period in effect be-
2 fore the application of this clause.

3 “(D) COORDINATION WITH BANKRUPTCY
4 LAWS.—Nothing in this paragraph shall affect
5 the rights of any authorized representative in
6 bankruptcy under section 1113 or 1114 of title
7 11, United States Code.

8 “(d) EXCEPTION FOR CERTAIN COLLECTIVELY BAR-
9 GAINED BENEFITS.—In the case of a plan maintained
10 pursuant to a collective bargaining agreement between em-
11 ployee representatives and the plan sponsor and in effect
12 before the beginning of the first day on which a limitation
13 would otherwise apply under subsections (a), (b), or (c)—

14 “(1) such limitations shall not apply to any
15 amendment, prohibited payment, or accrual with re-
16 spect to such plan, but

17 “(2) the plan sponsor shall contribute (in addi-
18 tion to any minimum required contribution under
19 section 430) the amount sufficient to result in a
20 funding target attainment percentage (as of the
21 valuation date for the plan year in which any such
22 limitation would otherwise apply) equal to the per-
23 centage necessary to prevent the limitation from ap-
24 plying.

1 “(e) RULES RELATING TO REQUIRED CONTRIBU-
2 TIONS.—

3 “(1) SECURITY MAY BE PROVIDED.—

4 “(A) IN GENERAL.—For purposes of this
5 section, the funding target attainment percent-
6 age shall be determined by treating as an asset
7 of the plan any security provided by a plan
8 sponsor in a form meeting the requirements of
9 subparagraph (B) .

10 “(B) FORM OF SECURITY.—The security
11 required under subparagraph (A) shall consist
12 of—

13 “(i) a bond issued by a corporate sur-
14 ety company that is an acceptable surety
15 for purposes of section 412 of the Em-
16 ployee Retirement Income Security Act of
17 1974,

18 “(ii) cash, or United States obliga-
19 tions which mature in 3 years or less, held
20 in escrow by a bank or similar financial in-
21 stitution, or

22 “(iii) such other form of security as is
23 satisfactory to the Secretary and the par-
24 ties involved.

1 “(C) RELEASE OF SECURITY.—The secu-
2 rity shall be released (and any amounts there-
3 under shall be refunded together with any inter-
4 est accrued thereon) at such time as the Sec-
5 retary may prescribe in regulations, including
6 regulations for partial releases of the security
7 by reason of increases in the funding target at-
8 tainment percentage.

9 “(2) PREFUNDING BALANCE MAY NOT BE
10 USED.—No prefunding balance under section 430(f)
11 may be used to satisfy any required contribution
12 under subsection (a)(2), (c)(3), (c)(4), or (d)(2).

13 “(3) TREATMENT AS UNPAID MINIMUM RE-
14 QUIRED CONTRIBUTION.—The amount of any re-
15 quired contribution which a plan sponsor fails to
16 make under subsection (c)(3) or (d)(2) for any plan
17 year shall be treated as an unpaid minimum re-
18 quired contribution for purposes of subsection (j)
19 and (k) of section 430 and for purposes of section
20 4971.

21 “(f) NEW PLANS.—Subsections (a) and (c) shall not
22 apply to a plan for the first 5 plan years of the plan. For
23 purposes of this subsection, the reference in this sub-
24 section to a plan shall include a reference to any prede-
25 cessor plan.

1 “(g) PRESUMED UNDERFUNDING FOR PURPOSES OF
2 BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUND-
3 ING STATUS.—

4 “(1) PRESUMPTION OF CONTINUED UNDER-
5 FUNDING.—In any case in which a benefit limitation
6 under subsection (a), (b), or (c) has been applied to
7 a plan with respect to the plan year preceding the
8 current plan year, the funding target attainment
9 percentage of the plan as of the valuation date of
10 the plan for the current plan year shall be presumed
11 to be equal to the funding target attainment per-
12 centage of the plan as of the valuation date of the
13 plan for the preceding plan year until the enrolled
14 actuary of the plan certifies the actual funding tar-
15 get attainment percentage of the plan as of the valu-
16 ation date of the plan for the current plan year.

17 “(2) PRESUMPTION OF UNDERFUNDING AFTER
18 10TH MONTH.—In any case in which no such certifi-
19 cation is made with respect to the plan before the
20 first day of the 10th month of the current plan year,
21 for purposes of subsections (a), (b), and (c), the
22 plan’s funding target attainment percentage shall be
23 conclusively presumed to be less than 60 percent as
24 of the first day of such 10th month, and such day
25 shall be deemed, for purposes of such subsections, to

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

3 “(h) TREATMENT OF PLAN AS OF CLOSE OF PRO-
4 HIBITED OR CESSATION PERIOD.—For purposes of apply-
5 ing this part—

6 “(1) OPERATION OF PLAN AFTER PERIOD.—
7 Unless the plan provides otherwise, a plan shall be
8 treated as having adopted an amendment which, ef-
9 fective as of the day following the close of a period
10 of limitation of payment or accrual of benefits under
11 subsection (b) or (c), provides for the resumption for
12 periods on or after such day of the payment or ac-
13 crual of such benefits.

14 “(2) TREATMENT OF AFFECTED BENEFITS.—
15 Nothing in this subsection shall be construed as af-
16 fecting the plan’s treatment of benefits which would
17 have been paid or accrued but for this section.

18 “(i) FUNDING TARGET ATTAINMENT PERCENT-
19 AGE.—For purposes of this section, the term ‘funding tar-
20 get attainment percentage’ has the same meaning given
21 such term by section 430(d)(2).”.

22 (b) EFFECTIVE DATES.—

23 (1) BENEFIT RESTRICTIONS.—Except as pro-
24 vided in paragraph (2)—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the amendments made by this sec-
3 tion shall apply with respect to plan years be-
4 ginning after 2006.

5 (B) BENEFIT INCREASES.—Section 436(a)
6 of the Internal Revenue Code of 1986 (as added
7 by subsection (a)) shall apply with respect to
8 plan years beginning after 2007.

9 (2) COLLECTIVE BARGAINING EXCEPTION.—In
10 the case of a plan maintained pursuant to 1 or more
11 collective bargaining agreements between employee
12 representatives and 1 or more employers ratified
13 January 1, 2007, the amendments made by this sec-
14 tion shall not apply to plan years beginning before
15 the earlier of—

16 (A) the later of—

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

23 (ii) the first day of the first plan year
24 to which the amendments made by this

1 subsection would (but for this subpara-
2 graph) apply, or

3 (B) January 1, 2010.

4 For purposes of subparagraph (A)(i), any plan
5 amendment made pursuant to a collective bargaining
6 agreement relating to the plan which amends the
7 plan solely to conform to any requirement added by
8 this section shall not be treated as a termination of
9 such collective bargaining agreement.

10 **SEC. 114. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EM-**
11 **PLOYER PLANS.**

12 (a) IN GENERAL.—Section 404 of the Internal Rev-
13 enue Code of 1986 (relating to deduction for contributions
14 of an employer to an employees' trust or annuity plan and
15 compensation under a deferred payment plan) is
16 amended—

17 (1) in subsection (a)(1)(A), by inserting “in the
18 case of a defined benefit plan other than a multiem-
19 ployer plan, in an amount determined under sub-
20 section (o), and in the case of any other plan” after
21 “section 501(a),”, and

22 (2) by inserting at the end the following new
23 subsection:

24 “(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER
25 PLANS.—For purposes of subsection (a)(1)(A)—

1 “(1) IN GENERAL.—In the case of a defined
2 benefit plan to which subsection (a)(1)(A) applies
3 (other than a multiemployer plan), the amount de-
4 termined under this subsection for any taxable year
5 shall be equal to the greater of—

6 “(A) the sum of the amounts determined
7 under paragraph (2) with respect to each plan
8 year ending with or within the taxable year, or

9 “(B) the sum of the minimum required
10 contributions under section 430 for such plan
11 years.

12 “(2) DETERMINATION OF AMOUNT.—

13 “(A) IN GENERAL.—The amount deter-
14 mined under this paragraph for any plan year
15 shall be equal to the excess (if any) of—

16 “(i) the sum of—

17 “(I) the funding target for the
18 plan year,

19 “(II) the target normal cost for
20 the plan year, and

21 “(III) the cushion amount for the
22 plan year, over

23 “(ii) the value (determined under sec-
24 tion 430(g)(2)) of the assets of the plan

1 which are held by the plan as of the valu-
2 ation date for the plan year.

3 “(B) SPECIAL RULE FOR CERTAIN EM-
4 PLOYERS.—If section 430(i) does not apply to
5 a plan for a plan year, the amount determined
6 under subparagraph (A)(i) for the plan year
7 shall in no event be less than the sum of—

8 “(i) the funding target for the plan
9 year (determined as if section 430(i) ap-
10 plied to the plan), plus

11 “(ii) the target normal cost for the
12 plan year (as so determined).

13 “(3) CUSHION AMOUNT.—For purposes of para-
14 graph (2)(A)(i)(III)—

15 “(A) IN GENERAL.—The cushion amount
16 for any plan year is the sum of—

17 “(i) 80 percent of the funding target
18 for the plan year, and

19 “(ii) the amount by which the funding
20 target for the plan year would increase if
21 the plan were to take into account—

22 “(I) increases in compensation
23 which are expected to occur in suc-
24 ceeding plan years, or

1 “(II) if the plan does not base
2 benefits for service to date on com-
3 pensation, increases in benefits which
4 are expected to occur in succeeding
5 plan years (determined on the basis of
6 the average annual increase in bene-
7 fits over the 6 immediately preceding
8 plan years).

9 “(B) LIMITATIONS.—

10 “(i) IN GENERAL.—In making the
11 computation under subparagraph (A)(ii),
12 the plan’s actuary shall assume that the
13 limitations under subsection (l) and section
14 415(b) shall apply.

15 “(ii) EXPECTED INCREASES.—In the
16 case of a plan year during which a plan is
17 covered under section 4021 of the Em-
18 ployee Retirement Income Security Act of
19 1974, the plan’s actuary may, notwith-
20 standing subsection (j) or (l), take into ac-
21 count increases in the limitations which are
22 expected to occur in succeeding plan years.

23 “(4) SPECIAL RULES FOR PLANS WITH 100 OR
24 FEWER PARTICIPANTS.—

1 “(A) IN GENERAL.—For purposes of deter-
2 mining the amount under paragraph (3) for any
3 plan year, in the case of a plan which has 100
4 or fewer participants for the plan year, the li-
5 ability of the plan attributable to benefit in-
6 creases for highly compensated employees (as
7 defined in section 414(q)) resulting from a plan
8 amendment which is made or becomes effective,
9 whichever is later, within the last 2 years shall
10 not be taken into account in determining the
11 target liability.

12 “(B) RULE FOR DETERMINING NUMBER
13 OF PARTICIPANTS.—For purposes of deter-
14 mining the number of plan participants, all de-
15 fined benefit plans maintained by the same em-
16 ployer (or any member of such employer’s con-
17 trolled group (within the meaning of section
18 412(f)(4))) shall be treated as one plan, but
19 only participants of such member or employer
20 shall be taken into account.

21 “(5) SPECIAL RULE FOR TERMINATING
22 PLANS.—In the case of a plan which, subject to sec-
23 tion 4041 of the Employee Retirement Income Secu-
24 rity Act of 1974, terminates during the plan year,
25 the amount determined under paragraph (2) shall in

1 no event be less than the amount required to make
2 the plan sufficient for benefit liabilities (within the
3 meaning of section 4041(d) of such Act).

4 “(6) ACTUARIAL ASSUMPTIONS.—Any computa-
5 tion under this subsection for any plan year shall
6 use the same actuarial assumptions which are used
7 for the plan year under section 430.

8 “(7) DEFINITIONS.—Any term used in this sub-
9 section which is also used in section 430 shall have
10 the same meaning given such term by section 430.”.

11 (b) EXCEPTION FROM LIMITATION ON DEDUCTION
12 WHERE COMBINATION OF DEFINED CONTRIBUTION AND
13 DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of
14 such Code, as amended by this Act, is amended by adding
15 at the end the following new clause:

16 “(iv) GUARANTEED PLANS.—In apply-
17 ing this paragraph, any single-employer
18 plan covered under section 4021 of the
19 Employee Retirement Income Security Act
20 of 1974 shall not be taken into account.”.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) The last sentence of section 404(a)(1)(A) of
23 such Code is amended by striking “section 412”
24 each place it appears and inserting “section 431”.

1 (2) Section 404(a)(1)(B) of such Code is
2 amended—

3 (A) by striking “In the case of a plan” and
4 inserting “In the case of a multiemployer plan”,

5 (B) by striking “section 412(c)(7)” each
6 place it appears and inserting “section
7 431(c)(6)”,

8 (C) by striking “section 412(c)(7)(B)” and
9 inserting “section 431(c)(6)(A)(ii)”,

10 (D) by striking “section 412(c)(7)(A)” and
11 inserting “section 431(c)(6)(A)(i)”, and

12 (E) by striking “section 412” and insert-
13 ing “section 431”.

14 (3) Section 404(a)(7)(A) of such Code, as
15 amended by this Act, is amended—

16 (A) by adding at the end of subparagraph
17 (A) the following new sentence: “In the case of
18 a defined benefit plan which is a single em-
19 ployer plan, the amount necessary to satisfy the
20 minimum funding standard provided by section
21 412 shall not be less than the plan’s funding
22 shortfall determined under section 430.”, and

23 (B) by striking subparagraph (D) and in-
24 serting:

1 “(D) INSURANCE CONTRACT PLANS.—For
2 purposes of this paragraph, a plan described in
3 section 412(g)(3) shall be treated as a defined
4 benefit plan.”.

5 (4) Section 404A(g)(3)(A) of such Code is
6 amended by striking “paragraphs (3) and (7) of sec-
7 tion 412(c)” and inserting “paragraphs (3) and (6)
8 of section 431(c)”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to plan years beginning after De-
11 cember 31, 2006.

12 **SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.**

13 (a) AMENDMENTS RELATED TO QUALIFICATION RE-
14 QUIREMENTS.—

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

17 “(29) BENEFIT LIMITATIONS ON PLANS IN AT-
18 RISK STATUS.—In the case of a defined benefit plan
19 (other than a multiemployer plan) to which the re-
20 quirements of section 412 apply, the trust of which
21 the plan is a part shall not constitute a qualified
22 trust under this subsection unless the plan meets the
23 requirements of section 436.”.

24 (2) Section 401(a)(32) of such Code is
25 amended—

1 (A) in subparagraph (A), by striking
2 “412(m)(5)” each place it appears and insert-
3 ing “section 430(j)(4)”, and

4 (B) in subparagraph (C), by striking “sec-
5 tion 412(m)” and inserting “section 430(j)”.

6 (3) Section 401(a), as amended by this Act, is
7 amended by striking paragraph (33) and by redesign-
8 ating paragraphs (34) and (35) as paragraph (33)
9 and (34).

10 (b) VESTING RULES.—Section 411 of such Code is
11 amended—

12 (1) by striking “section 412(c)(8)” in sub-
13 section (a)(3)(C) and inserting “section 412(d)(2)”,
14 (2) in subsection (b)(1)(F)—

15 (A) by striking “paragraphs (2) and (3) of
16 section 412(i)” in clause (ii) and inserting
17 “subparagraphs (B) and (C) of section
18 412(e)(3)”, and

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

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

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

4 “(I) the amount determined
5 under section 431(c)(6)(A)(i) in the
6 case of a multiemployer plan (and the
7 sum of the funding shortfall and tar-
8 get normal cost determined under sec-
9 tion 430 in the case of any other
10 plan), over”.

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

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

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

17 “(A) the lesser of—

18 “(i) the fair market value of the
19 plan’s assets (reduced by the pre-funding
20 balance and the funding standard carry-
21 over balance, as determined under section
22 430(f)), or

23 “(ii) the value of plan assets as deter-
24 mined under section 430(g)(3) after reduc-
25 tion under section 430(f), over

1 “(B) 125 percent of the sum of the fund-
2 ing shortfall and the target normal cost deter-
3 mined under section 430 for such plan year.”.

4 (2) Section 420(e)(4) of such Code is amended
5 to read as follows:

6 “(4) COORDINATION WITH SECTION 430.—In
7 the case of a qualified transfer, any assets so trans-
8 ferred shall not, for purposes of this section, be
9 treated as assets in the plan.”.

10 (e) EXCISE TAXES.—

11 (1) IN GENERAL.—Subsections (a) and (b) of
12 section 4971 of such Code are amended to read as
13 follows:

14 “(a) INITIAL TAX.—If at any time during any taxable
15 year an employer maintains a plan to which section 412
16 applies, there is hereby imposed for the taxable year a tax
17 equal to—

18 “(1) in the case of a single-employer plan, 10
19 percent of the aggregate unpaid minimum required
20 contributions for all plan years remaining unpaid as
21 of the end of any plan year ending with or within
22 the taxable year, and

23 “(2) in the case of a multiemployer plan, 5 per-
24 cent of the accumulated funding deficiency deter-

1 mined under section 431 as of the end of any plan
2 year ending with or within the taxable year.

3 “(b) ADDITIONAL TAX.—If—

4 “(1) a tax is imposed under subsection (a)(1)
5 on any unpaid required minimum contribution and
6 such amount remains unpaid as of the close of the
7 taxable period, or

8 “(2) a tax is imposed under subsection (a)(2)
9 on any accumulated funding deficiency and the accu-
10 mulated funding deficiency is not corrected within
11 the taxable period,

12 there is hereby imposed a tax equal to 100 percent of the
13 unpaid minimum required contribution or accumulated
14 funding deficiency, whichever is applicable, to the extent
15 not so paid or corrected.”.

16 (2) Section 4971(c) of such Code is amended—

17 (A) by striking “the last two sentences of
18 section 412(a)” in paragraph (1) and inserting
19 “section 431”, and

20 (B) by adding at the end the following new
21 paragraph:

22 “(4) UNPAID MINIMUM REQUIRED CONTRIBU-
23 TION.—

24 “(A) IN GENERAL.—The term ‘unpaid
25 minimum required contribution’ means, with re-

1 spect to any plan year, any minimum required
2 contribution under section 430 for the plan
3 year which is not paid on or before the due date
4 (as determined under section 430(j)(1)) for the
5 plan year.

6 “(B) ORDERING RULE.—Any payment to
7 or under a plan for any plan year shall be allo-
8 cated first to unpaid minimum required con-
9 tributions for all preceding plan years on a
10 first-in, first-out basis and then to the min-
11 imum required contribution under section 430
12 for the plan year.”.

13 (3) Section 4971(e)(1) of such Code is amended
14 by striking “section 412(b)(3)(A)” and inserting
15 “section 412(a)(1)(A)”.

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

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

20 (B) by striking “section 412(m)” and in-
21 serting “section 430(j)”.

22 (5) Section 4972(c)(7) of such Code is amended
23 by striking “except to the extent that such contribu-
24 tions exceed the full-funding limitation (as defined in
25 section 412(c)(7), determined without regard to sub-

1 paragraph (A)(i)(I) thereof” and inserting “except,
2 in the case of a multiemployer plan, to the extent
3 that such contributions exceed the full-funding limi-
4 tation (as defined in section 431(c)(6))”.

5 (f) REPORTING REQUIREMENTS.—Section 6059(b) of
6 such Code is amended—

7 (1) by striking “the accumulated funding defi-
8 ciency (as defined in section 412(a))” in paragraph
9 (2) and inserting “the minimum required contribu-
10 tion determined under section 430, or the accumu-
11 lated funding deficiency determined under section
12 431,” and

13 (2) by striking paragraph (3)(B) and inserting:
14 “(B) the requirements for reasonable actu-
15 arial assumptions under section 430(h)(1) or
16 431(c)(3), whichever are applicable, have been
17 complied with.”.

18 **Subtitle C—Interest Rate Assump-**
19 **tions and Deductible Amounts**
20 **for 2006**

21 **SEC. 121. EXTENSION OF REPLACEMENT OF 30-YEAR**
22 **TREASURY RATES.**

23 (a) AMENDMENTS OF ERISA.—

1 (1) DETERMINATION OF RANGE.—Subclause
2 (II) of section 302(b)(5)(B)(ii) of the Employee Re-
3 tirement Income Security Act of 1974 is amended—

4 (A) by striking “2006” and inserting
5 “2007”, and

6 (B) by striking “AND 2005” in the heading
7 and inserting “, 2005, AND 2006”.

8 (2) DETERMINATION OF CURRENT LIABILITY.—
9 Subclause (IV) of section 302(d)(7)(C)(i) of such
10 Act is amended—

11 (A) by striking “or 2005” and inserting “,
12 2005, or 2006”, and

13 (B) by striking “AND 2005” in the heading
14 and inserting “, 2005, AND 2006”.

15 (3) PBGC PREMIUM RATE.—Subclause (V) of
16 section 4006(a)(3)(E)(iii) of such Act is amended by
17 striking “2006” and inserting “2007”.

18 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

19 (1) DETERMINATION OF RANGE.—Subclause
20 (II) of section 412(b)(5)(B)(ii) of the Internal Rev-
21 enue Code of 1986 is amended—

22 (A) by striking “2006” and inserting
23 “2007”, and

24 (B) by striking “AND 2005” in the heading
25 and inserting “, 2005, AND 2006”.

1 (2) DETERMINATION OF CURRENT LIABILITY.—
2 Subclause (IV) of section 412(l)(7)(C)(i) of such
3 Code is amended—

4 (A) by striking “or 2005” and inserting “,
5 2005, or 2006”, and

6 (B) by striking “AND 2005” in the heading
7 and inserting “, 2005, AND 2006”.

8 (c) PLAN AMENDMENTS.—Clause (ii) of section
9 101(e)(2)(A) of the Pension Funding Equity Act of 2004
10 is amended by striking “2006” and inserting “2007”.

11 **SEC. 122. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

12 (a) IN GENERAL.—Clause (i) of section 404(a)(1)(D)
13 of the Internal Revenue Code of 1986 (relating to special
14 rule in case of certain plans) is amended by striking “sec-
15 tion 412(l)” and inserting “section 412(l)(8)(A), except
16 that section 412(l)(8)(A) shall be applied for purposes of
17 this clause by substituting ‘180 percent (130 percent in
18 the case of a multiemployer plan) of current liability’ for
19 ‘the current liability’ in clause (i).”

20 (b) CONFORMING AMENDMENT.—Section 404(a)(1)
21 of the Internal Revenue Code of 1986 is amended by strik-
22 ing subparagraph (F).

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to years beginning after December
25 31, 2005.

1 **SEC. 123. UPDATING DEDUCTION RULES FOR COMBINA-**
2 **TION OF PLANS.**

3 (a) **IN GENERAL.**—Subparagraph (C) of section
4 404(a)(7) of the Internal Revenue Code of 1986 (relating
5 to limitation on deductions where combination of defined
6 contribution plan and defined benefit plan) is amended by
7 adding after clause (ii) the following new clause:

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

23 (b) **CONFORMING AMENDMENT.**—Subparagraph (A)
24 of section 4972(c)(6) of such Code (relating to nondeduct-
25 ible contributions) is amended to read as follows:

1 “(A) so much of the contributions to 1 or
2 more defined contribution plans which are not
3 deductible when contributed solely because of
4 section 404(a)(7) as does not exceed the
5 amount of contributions described in section
6 401(m)(4)(A), or”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to contributions for taxable years
9 beginning after December 31, 2005.

10 **Subtitle D—Other Provisions**

11 **SEC. 131. MODIFICATION OF TRANSITION RULE TO PEN-** 12 **SION FUNDING REQUIREMENTS.**

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

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

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

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

23 the rules described in subsection (b) shall apply for any
24 plan year beginning after 2006.

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

3 (1) For purposes of section 430(i)(3) of the In-
4 ternal Revenue Code of 1986 and section 303(j)(3)
5 of the Employee Retirement Income Security Act of
6 1974, the plan shall be treated as not having a fund-
7 ing shortfall for any plan year.

8 (2) For purposes of—

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

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

15 the mortality table shall be the mortality table used
16 by the plan.

17 (3) Notwithstanding section 303(f)(4)(B) of
18 such Act, for purposes of section 303(c)(4)(B) of
19 such Act, the value of plan assets is deemed to be
20 such amount, reduced by the amount of the
21 prefunding balance if, pursuant to a binding written
22 agreement with the Pension Benefit Guaranty Cor-
23 poration entered into before January 1, 2007, the
24 funding standard carryover balance is not available

1 to reduce the minimum required contribution for the
2 plan year.

3 (c) DEFINITIONS.—Any term used in this section
4 which is also used in section 303 of such Act shall have
5 the meaning provided such term in such section.

6 (d) PLAN YEAR BEFORE NEW FUNDING RULES.—
7 Section 769(c)(3) of the Retirement Protection Act of
8 1994, as added by section 201 of the Pension Funding
9 Equity Act of 2004, is amended by striking “and 2005”
10 and inserting “, 2005, and 2006”.

11 (e) CONFORMING AMENDMENT.—

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

14 (2) The amendment made this subsection shall
15 apply to plan years beginning after 2006.

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(e)(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 Defined
21 Benefit Security 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 Defined
4 Benefit Security 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 Defined Benefit Security
14 Act of 2005), the excess (if any) of any debit
15 balance in the funding standard account (deter-
16 mined without regard to this subparagraph)
17 over any debit balance in the alternative min-
18 imum 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 Defined Benefit Security Act of 2005) over
24 any period beginning with a plan year beginning be-
25 fore 2007, in lieu of the amortization described in

1 paragraphs (2)(B) and (3)(B), such amount shall
2 continue to be amortized under such section as so in
3 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.—Except as provided in sub-
22 section (c)(9), the funding standard account (and
23 items therein) shall be charged or credited (as deter-
24 mined under regulations prescribed by the Secretary
25 of the Treasury) with interest at the appropriate

1 rate consistent with the rate or rates of interest used
2 under the plan to determine costs.

3 “(7) CERTAIN AMORTIZATION CHARGES AND
4 CREDITS.—In the case of a plan which, immediately
5 before the date of the enactment of the Multiem-
6 ployer Pension Plan Amendments Act of 1980, was
7 a multiemployer plan (within the meaning of section
8 3(37) as in effect immediately before such date)—

9 “(A) any amount described in paragraph
10 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-
11 section which arose in a plan year beginning be-
12 fore such date shall be amortized in equal an-
13 nual installments (until fully amortized) over 40
14 plan years, beginning with the plan year in
15 which the amount arose;

16 “(B) any amount described in paragraph
17 (2)(B)(iv) or (3)(B)(ii) of this subsection which
18 arose in a plan year beginning before such date
19 shall be amortized in equal annual installments
20 (until fully amortized) over 20 plan years, be-
21 ginning with the plan year in which the amount
22 arose;

23 “(C) any change in past service liability
24 which arises during the period of 3 plan years
25 beginning on or after such date, and results

1 from a plan amendment adopted before such
2 date, shall be amortized in equal annual install-
3 ments (until fully amortized) over 40 plan
4 years, beginning with the plan year in which the
5 change arises; and

6 “(D) any change in past service liability
7 which arises during the period of 2 plan years
8 beginning on or after such date, and results
9 from the changing of a group of participants
10 from one benefit level to another benefit level
11 under a schedule of plan benefits which—

12 “(i) was adopted before such date,
13 and

14 “(ii) was effective for any plan partici-
15 pant before the beginning of the first plan
16 year beginning on or after such date,
17 shall be amortized in equal annual installments
18 (until fully amortized) over 40 plan years, be-
19 ginning with the plan year in which the change
20 arises.

21 “(8) SPECIAL RULES RELATING TO CHARGES
22 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
23 For purposes of this part—

24 “(A) WITHDRAWAL LIABILITY.—Any
25 amount received by a multiemployer plan in

1 payment of all or part of an employer's with-
2 drawal liability under part 1 of subtitle E of
3 title IV shall be considered an amount contrib-
4 uted by the employer to or under the plan. The
5 Secretary of the Treasury may prescribe by reg-
6 ulation additional charges and credits to a mul-
7 tiemployer plan's funding standard account to
8 the extent necessary to prevent withdrawal li-
9 ability payments from being unduly reflected as
10 advance funding for plan liabilities.

11 “(B) ADJUSTMENTS WHEN A MULTIEM-
12 PLOYER PLAN LEAVES REORGANIZATION.—If a
13 multiemployer plan is not in reorganization in
14 the plan year but was in reorganization in the
15 immediately preceding plan year, any balance in
16 the funding standard account at the close of
17 such immediately preceding plan year—

18 “(i) shall be eliminated by an offset-
19 ting credit or charge (as the case may be),
20 but

21 “(ii) shall be taken into account in
22 subsequent plan years by being amortized
23 in equal annual installments (until fully
24 amortized) over 30 plan years.

1 The preceding sentence shall not apply to the
2 extent of any accumulated funding deficiency
3 under section 4243(a) as of the end of the last
4 plan year that the plan was in reorganization.

5 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
6 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
7 FUND.—Any amount paid by a plan during a
8 plan year to the Pension Benefit Guaranty Cor-
9 poration pursuant to section 4222 of this Act or
10 to a fund exempt under section 501(c)(22) of
11 the Internal Revenue Code of 1986 pursuant to
12 section 4223 of this Act shall reduce the
13 amount of contributions considered received by
14 the plan for the plan year.

15 “(D) INTERIM WITHDRAWAL LIABILITY
16 PAYMENTS.—Any amount paid by an employer
17 pending a final determination of the employer’s
18 withdrawal liability under part 1 of subtitle E
19 of title IV and subsequently refunded to the
20 employer by the plan shall be charged to the
21 funding standard account in accordance with
22 regulations prescribed by the Secretary of the
23 Treasury.

24 “(E) ELECTION FOR DEFERRAL OF
25 CHARGE FOR PORTION OF NET EXPERIENCE

1 LOSS.—If an election is in effect under section
2 302(b)(7)(F) (as in effect on the day before the
3 date of the enactment of the Defined Benefit
4 Security Act of 2005) for any plan year, the
5 funding standard account shall be charged in
6 the plan year to which the portion of the net ex-
7 perience loss deferred by such election was de-
8 ferred with the amount so deferred (and para-
9 graph (2)(B)(ii) shall not apply to the amount
10 so charged).

11 “(F) FINANCIAL ASSISTANCE.—Any
12 amount of any financial assistance from the
13 Pension Benefit Guaranty Corporation to any
14 plan, and any repayment of such amount, shall
15 be taken into account under this section and
16 section 412 of the Internal Revenue Code of
17 1986 in such manner as is determined by the
18 Secretary of the Treasury.

19 “(G) SHORT-TERM BENEFITS.—To the ex-
20 tent that any plan amendment increases the un-
21 funded past service liability under the plan by
22 reason of an increase in benefits which are pay-
23 able under the terms of the plan for a period
24 that does not exceed 14 years from the effective
25 date of the amendment, paragraph (2)(B)(i)

1 shall be applied separately with respect to such
2 increase in unfunded past service liability by
3 substituting the number of years of the period
4 during which such benefits are payable for '15'.

5 “(c) ADDITIONAL RULES.—

6 “(1) DETERMINATIONS TO BE MADE UNDER
7 FUNDING METHOD.—For purposes of this part, nor-
8 mal costs, accrued liability, past service liabilities,
9 and experience gains and losses shall be determined
10 under the funding method used to determine costs
11 under the plan.

12 “(2) VALUATION OF ASSETS.—

13 “(A) IN GENERAL.—For purposes of this
14 part, the value of the plan’s assets shall be de-
15 termined on the basis of any reasonable actu-
16 arial method of valuation which takes into ac-
17 count fair market value and which is permitted
18 under regulations prescribed by the Secretary of
19 the Treasury.

20 “(B) ELECTION WITH RESPECT TO
21 BONDS.—The value of a bond or other evidence
22 of indebtedness which is not in default as to
23 principal or interest may, at the election of the
24 plan administrator, be determined on an amor-
25 tized basis running from initial cost at purchase

1 to par value at maturity or earliest call date.
2 Any election under this subparagraph shall be
3 made at such time and in such manner as the
4 Secretary of the Treasury shall by regulations
5 provide, shall apply to all such evidences of in-
6 debtedness, and may be revoked only with the
7 consent of such Secretary.

8 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
9 SONABLE.—For purposes of this section, all costs, li-
10 abilities, rates of interest, and other factors under
11 the plan shall be determined on the basis of actu-
12 arial assumptions and methods—

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

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

19 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
20 PERIENCE GAIN OR LOSS.—For purposes of this sec-
21 tion, if—

22 “(A) a change in benefits under the Social
23 Security Act or in other retirement benefits cre-
24 ated under Federal or State law, or

1 “(B) a change in the definition of the term
2 ‘wages’ under section 3121 of the Internal Rev-
3 enue Code of 1986, or a change in the amount
4 of such wages taken into account under regula-
5 tions prescribed for purposes of section
6 401(a)(5) of such Code,

7 results in an increase or decrease in accrued liability
8 under a plan, such increase or decrease shall be
9 treated as an experience loss or gain.

10 “(5) FULL FUNDING.—If, as of the close of a
11 plan year, a plan would (without regard to this para-
12 graph) have an accumulated funding deficiency in
13 excess of the full funding limitation—

14 “(A) the funding standard account shall be
15 credited with the amount of such excess, and

16 “(B) all amounts described in subpara-
17 graphs (B), (C), and (D) of subsection (b) (2)
18 and subparagraph (B) of subsection (b)(3)
19 which are required to be amortized shall be con-
20 sidered fully amortized for purposes of such
21 subparagraphs.

22 “(6) FULL-FUNDING LIMITATION.—

23 “(A) IN GENERAL.—For purposes of para-
24 graph (5), the term ‘full-funding limitation’
25 means the excess (if any) of—

1 “(i) the accrued liability (including
2 normal cost) under the plan (determined
3 under the entry age normal funding meth-
4 od if such accrued liability cannot be di-
5 rectly calculated under the funding method
6 used for the plan), over

7 “(ii) the lesser of—

8 “(I) the fair market value of the
9 plan’s assets, or

10 “(II) the value of such assets de-
11 termined under paragraph (2).

12 “(B) MINIMUM AMOUNT.—

13 “(i) IN GENERAL.—In no event shall
14 the full-funding limitation determined
15 under subparagraph (A) be less than the
16 excess (if any) of—

17 “(I) 90 percent of the current li-
18 ability of the plan (including the ex-
19 pected increase in current liability due
20 to benefits accruing during the plan
21 year), over

22 “(II) the value of the plan’s as-
23 sets determined under paragraph (2).

24 “(ii) ASSETS.—For purposes of clause
25 (i), assets shall not be reduced by any

1 credit balance in the funding standard ac-
2 count.

3 “(C) FULL FUNDING LIMITATION.—For
4 purposes of this paragraph, unless otherwise
5 provided by the plan, the accrued liability under
6 a multiemployer plan shall not include benefits
7 which are not nonforfeitable under the plan
8 after the termination of the plan (taking into
9 consideration section 411(d)(3) of the Internal
10 Revenue Code of 1986).

11 “(D) CURRENT LIABILITY.—For purposes
12 of this paragraph—

13 “(i) IN GENERAL.—The term ‘current
14 liability’ means all liabilities to employees
15 and their beneficiaries under the plan.

16 “(ii) TREATMENT OF UNPREDICTABLE
17 CONTINGENT EVENT BENEFITS.—For pur-
18 poses of clause (i), any benefit contingent
19 on an event other than—

20 “(I) age, service, compensation,
21 death, or disability, or

22 “(II) an event which is reason-
23 ably and reliably predictable (as deter-
24 mined by the Secretary of the Treas-
25 ury),

1 shall not be taken into account until the
2 event on which the benefit is contingent oc-
3 curs.

4 “(iii) INTEREST RATE USED.—The
5 rate of interest used to determine current
6 liability under this paragraph shall be the
7 rate of interest determined under subpara-
8 graph (E).

9 “(iv) MORTALITY TABLES.—

10 “(I) COMMISSIONERS’ STANDARD
11 TABLE.—In the case of plan years be-
12 ginning before the first plan year to
13 which the first tables prescribed under
14 subclause (II) apply, the mortality
15 table used in determining current li-
16 ability under this paragraph shall be
17 the table prescribed by the Secretary
18 of the Treasury which is based on the
19 prevailing commissioners’ standard
20 table (described in section
21 807(d)(5)(A) of the Internal Revenue
22 Code of 1986) used to determine re-
23 serves for group annuity contracts
24 issued on January 1, 1993.

1 shall establish separate tables for indi-
2 viduals whose disabilities occur in
3 plan years beginning before January
4 1, 1995, and for individuals whose
5 disabilities occur in plan years begin-
6 ning on or after such date.

7 “(II) SPECIAL RULE FOR DIS-
8 ABILITIES OCCURRING AFTER 1994.—
9 In the case of disabilities occurring in
10 plan years beginning after December
11 31, 1994, the tables under subclause
12 (I) shall apply only with respect to in-
13 dividuals described in such subclause
14 who are disabled within the meaning
15 of title II of the Social Security Act
16 and the regulations thereunder.

17 “(vi) PERIODIC REVIEW.—The Sec-
18 retary of the Treasury shall periodically (at
19 least every 5 years) review any tables in ef-
20 fect under this subparagraph and shall, to
21 the extent such Secretary determines nec-
22 essary, by regulation update the tables to
23 reflect the actual experience of pension
24 plans and projected trends in such experi-
25 ence.

1 “(E) REQUIRED CHANGE OF INTEREST
2 RATE.—For purposes of determining a plan’s
3 current liability for purposes of this
4 paragraph—

5 “(i) IN GENERAL.—If any rate of in-
6 terest used under the plan under sub-
7 section (b)(6) to determine cost is not
8 within the permissible range, the plan shall
9 establish a new rate of interest within the
10 permissible range.

11 “(ii) PERMISSIBLE RANGE.—For pur-
12 poses of this subparagraph—

13 “(I) IN GENERAL.—Except as
14 provided in subclause (II), the term
15 ‘permissible range’ means a rate of in-
16 terest which is not more than 5 per-
17 cent above, and not more than 10 per-
18 cent below, the weighted average of
19 the rates of interest on 30-year Treas-
20 ury securities during the 4-year period
21 ending on the last day before the be-
22 ginning of the plan year.

23 “(II) SECRETARIAL AUTHOR-
24 ITY.—If the Secretary of the Treasury
25 finds that the lowest rate of interest

1 permissible under subclause (I) is un-
2 reasonably high, such Secretary may
3 prescribe a lower rate of interest, ex-
4 cept that such rate may not be less
5 than 80 percent of the average rate
6 determined under such subclause.

7 “(iii) ASSUMPTIONS.—Notwith-
8 standing paragraph (3)(A), the interest
9 rate used under the plan shall be—

10 “(I) determined without taking
11 into account the experience of the
12 plan and reasonable expectations, but

13 “(II) consistent with the assump-
14 tions which reflect the purchase rates
15 which would be used by insurance
16 companies to satisfy the liabilities
17 under the plan.

18 “(7) ANNUAL VALUATION.—

19 “(A) IN GENERAL.—For purposes of this
20 section, a determination of experience gains and
21 losses and a valuation of the plan’s liability
22 shall be made not less frequently than once
23 every year, except that such determination shall
24 be made more frequently to the extent required

1 in particular cases under regulations prescribed
2 by the Secretary of the Treasury.

3 “(B) VALUATION DATE.—

4 “(i) CURRENT YEAR.—Except as pro-
5 vided in clause (ii), the valuation referred
6 to in subparagraph (A) shall be made as of
7 a date within the plan year to which the
8 valuation refers or within one month prior
9 to the beginning of such year.

10 “(ii) USE OF PRIOR YEAR VALU-
11 ATION.—The valuation referred to in sub-
12 paragraph (A) may be made as of a date
13 within the plan year prior to the year to
14 which the valuation refers if, as of such
15 date, the value of the assets of the plan are
16 not less than 100 percent of the plan’s cur-
17 rent liability (as defined in paragraph
18 (6)(D) without regard to clause (iv) there-
19 of).

20 “(iii) ADJUSTMENTS.—Information
21 under clause (ii) shall, in accordance with
22 regulations, be actuarially adjusted to re-
23 flect significant differences in participants.

24 “(iv) LIMITATION.—A change in fund-
25 ing method to use a prior year valuation,

1 as provided in clause (ii), may not be made
2 unless as of the valuation date within the
3 prior plan year, the value of the assets of
4 the plan are not less than 125 percent of
5 the plan's current liability (as defined in
6 paragraph (6)(D) without regard to clause
7 (iv) thereof).

8 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
9 DEEMED MADE.—For purposes of this section, any
10 contributions for a plan year made by an employer
11 after the last day of such plan year, but not later
12 than two and one-half months after such day, shall
13 be deemed to have been made on such last day. For
14 purposes of this subparagraph, such two and one-
15 half month period may be extended for not more
16 than six months under regulations prescribed by the
17 Secretary of the Treasury.

18 “(9) INTEREST RULE FOR WAIVERS AND EX-
19 TENSIONS.—The interest rate applicable for any
20 plan year for purposes of computing the amortiza-
21 tion charge described in subsection (b)(2)(C) and in
22 connection with an extension granted under sub-
23 section (d) shall be the rate of interest used under
24 the plan for determining costs.

1 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
2 MULTIEMPLOYER PLANS.—

3 “(1) AUTOMATIC EXTENSION UPON APPLICA-
4 TION BY CERTAIN PLANS.—

5 “(A) IN GENERAL.—If the plan sponsor of
6 a multiemployer plan—

7 “(i) submits to the Secretary of the
8 Treasury an application for an extension of
9 the period of years required to amortize
10 any unfunded liability described in any
11 clause of subsection (b)(2)(B) or described
12 in subsection (b)(4), and

13 “(ii) includes with the application a
14 certification by the plan’s actuary de-
15 scribed in subparagraph (B),

16 the Secretary of the Treasury shall extend the
17 amortization period for the period of time (not
18 in excess of 5 years) specified in the applica-
19 tion. Such extension shall be in addition to any
20 extension under paragraph (2).

21 “(B) CRITERIA.—A certification with re-
22 spect to a multiemployer plan is described in
23 this subparagraph if the plan’s actuary certifies
24 that, based on reasonable assumptions—

1 “(i) absent the extension under sub-
2 paragraph (A), the plan would have an ac-
3 cumulated funding deficiency in the cur-
4 rent plan year or any of the 9 succeeding
5 plan years,

6 “(ii) the plan sponsor has adopted a
7 plan to improve the plan’s funding status,

8 “(iii) the plan is projected to have suf-
9 ficient assets to timely pay expected bene-
10 fits and anticipated expenditures over the
11 amortization period as extended, and

12 “(iv) the notice required under para-
13 graph (3)(A) has been provided.

14 “(2) ADDITIONAL EXTENSION.—

15 “(A) IN GENERAL.—If the plan sponsor of
16 a multiemployer plan submits to the Secretary
17 of the Treasury an application for an extension
18 of the period of years required to amortize any
19 unfunded liability described in any clause of
20 subsection (b)(2)(B) or described in subsection
21 (b)(4), the Secretary of the Treasury may ex-
22 tend the amortization period for a period of
23 time (not in excess of 5 years) if the Secretary
24 of the Treasury makes the determination de-
25 scribed in subparagraph (B). Such extension

1 shall be in addition to any extension under
2 paragraph (1).

3 “(B) DETERMINATION.—The Secretary
4 make grant an extension under subparagraph
5 (A) if the Secretary determines that—

6 “(i) such extension would carry out
7 the purposes of this Act and would provide
8 adequate protection for participants under
9 the plan and their beneficiaries, and

10 “(ii) the failure to permit such exten-
11 sion would—

12 “(I) result in a substantial risk
13 to the voluntary continuation of the
14 plan, or a substantial curtailment of
15 pension benefit levels or employee
16 compensation, and

17 “(II) be adverse to the interests
18 of plan participants in the aggregate.

19 “(C) ACTION BY SECRETARY.—The Sec-
20 retary of the Treasury shall act upon any appli-
21 cation for an extension under this paragraph
22 within 180 days of the submission of such ap-
23 plication. If the Secretary rejects the applica-
24 tion for an extension under this paragraph, the
25 Secretary shall provide notice to the plan detail-

1 ing the specific reasons for the rejection, includ-
2 ing references to the criteria set forth above.

3 “(3) ADVANCE NOTICE.—

4 “(A) IN GENERAL.—The Secretary of the
5 Treasury shall, before granting an extension
6 under this subsection, require each applicant to
7 provide evidence satisfactory to such Secretary
8 that the applicant has provided notice of the fil-
9 ing of the application for such extension to each
10 affected party (as defined in section
11 4001(a)(21)) with respect to the affected plan.
12 Such notice shall include a description of the
13 extent to which the plan is funded for benefits
14 which are guaranteed under title IV and for
15 benefit liabilities.

16 “(B) CONSIDERATION OF RELEVANT IN-
17 FORMATION.—The Secretary of the Treasury
18 shall consider any relevant information provided
19 by a person to whom notice was given under
20 paragraph (1).”.

21 (b) SHORTFALL FUNDING METHOD.—

22 (1) IN GENERAL.—A multiemployer plan meet-
23 ing the criteria of paragraph (2) may adopt, use, or
24 cease using, the shortfall funding method and such
25 adoption, use, or cessation of use of such method,

1 shall be deemed approved by the Secretary of the
2 Treasury under section 302(d)(1) of the Employee
3 Retirement Income Security Act of 1974 and section
4 412(e)(1) of the Internal Revenue Code of 1986.

5 (2) CRITERIA.—A multiemployer pension plan
6 meets the criteria of this clause if—

7 (A) the plan has not used the shortfall
8 funding method during the 5-year period ending
9 on the day before the date the plan is to use
10 the method under paragraph (1); and

11 (B) the plan is not operating under an am-
12 ortization period extension under section 304(d)
13 of such Act.

14 (3) SHORTFALL FUNDING METHOD DEFINED.—
15 For purposes of this subsection, the term “shortfall
16 funding method” means the shortfall funding meth-
17 od described in Treasury Regulations section
18 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

19 (4) BENEFIT RESTRICTIONS TO APPLY.—The
20 benefit restrictions under section 302(c)(7) of such
21 Act and section 412(d)(7) of such Code shall apply
22 during any period a multiemployer plan is on the
23 shortfall funding method pursuant to this sub-
24 section.

1 amended by inserting after section 304 the following new
2 section:

3 “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER
4 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

5 “SEC. 305. (a) GENERAL RULE.—For purposes of
6 this part, in the case of a multiemployer plan—

7 “(1) if the plan is in endangered status—

8 “(A) the plan sponsor shall adopt and im-
9 plement a funding improvement plan in accord-
10 ance with the requirements of subsection (c),
11 and

12 “(B) the requirements of subsection (d)
13 shall apply during the funding plan adoption
14 period and the funding improvement period,
15 and

16 “(2) if the plan is in critical status—

17 “(A) the plan sponsor shall adopt and im-
18 plement a rehabilitation plan in accordance with
19 the requirements of subsection (e), and

20 “(B) the requirements of subsection (f)
21 shall apply during the rehabilitation plan adop-
22 tion period and the rehabilitation period.

23 “(b) DETERMINATION OF ENDANGERED AND CRIT-
24 ICAL STATUS.—For purposes of this section—

25 “(1) ENDANGERED STATUS.—A multiemployer
26 plan is in endangered status for a plan year if, as

1 determined by the plan actuary under paragraph
2 (3), the plan is not in critical status for the plan
3 year and either—

4 “(A) the plan’s funded percentage for such
5 plan year is less than 80 percent, or

6 “(B) the plan has an accumulated funding
7 deficiency for such plan year, or is projected to
8 have such an accumulated funding deficiency
9 for any of the 6 succeeding plan years, taking
10 into account any extension of amortization peri-
11 ods under section 304(d).

12 For purposes of this section, a plan described in
13 subparagraph (B) shall be treated as in seriously en-
14 dangered status.

15 “(2) CRITICAL STATUS.—A multiemployer plan
16 is in critical status for a plan year if, as determined
17 by the plan actuary under paragraph (3), the plan
18 is described in 1 or more of the following subpara-
19 graphs as of the beginning of the plan year:

20 “(A) A plan is described in this subpara-
21 graph if—

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

24 “(ii) the sum of—

1 “(I) the market value of plan as-
2 sets, plus

3 “(II) the present value of the
4 reasonably anticipated employer con-
5 tributions for the current plan year
6 and each of the 5 succeeding plan
7 years, assuming that the terms of the
8 one or more collective bargaining
9 agreements pursuant to which the
10 plan is maintained for the current
11 plan year continue in effect for suc-
12 ceeding plan years,

13 is less than the present value of all benefits
14 projected to be payable under the plan dur-
15 ing the current plan year and each of the
16 5 succeeding plan years (plus administra-
17 tive expenses for such plan years).

18 “(B) A plan is described in this subpara-
19 graph if—

20 “(i) the plan has an accumulated
21 funding deficiency for the current plan
22 year, not taking into account any extension
23 of amortization periods under section
24 304(d), or

1 “(ii) the plan is projected to have an
2 accumulated funding deficiency for any of
3 the 3 succeeding plan years (4 succeeding
4 plan years if the funded percentage of the
5 plan is 65 percent or less), not taking into
6 account any extension of amortization peri-
7 ods under section 304(d).

8 “(C) A plan is described in this subpara-
9 graph if—

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

17 “(II) the present value of the reason-
18 ably anticipated employer contributions for
19 the current plan year,

20 “(ii) the present value of nonforfeit-
21 able benefits of inactive participants is
22 greater than the present value of non-
23 forfeitable benefits of active participants,
24 and

1 “(iii) the plan has an accumulated
2 funding deficiency for the current plan
3 year, or is projected to have such a defi-
4 ciency for any of the 4 succeeding plan
5 years, not taking into account any exten-
6 sion of amortization periods under section
7 304(d).

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 of the Treasury
14 whether or not the plan is in endangered status
15 for such plan year and whether or not the plan
16 is in critical status for such plan year.

17 “(B) ACTUARIAL PROJECTIONS OF ASSETS
18 AND LIABILITIES.—

19 “(i) IN GENERAL.—In making the de-
20 terminations and projections under this
21 subsection, the plan actuary shall make
22 projections required for the current and
23 succeeding plan years, using reasonable ac-
24 tuarial estimates, assumptions, and meth-
25 ods, of the current value of the assets of

1 the plan and the present value of all liabil-
2 ities to participants and beneficiaries under
3 the plan for the current plan year as of the
4 beginning of such year. The projected
5 present value of liabilities as of the begin-
6 ning of such year shall be determined
7 based on the actuarial statement required
8 under section 103(d) with respect to the
9 most recently filed annual report or the ac-
10 tuarial valuation for the preceding plan
11 year.

12 “(ii) DETERMINATIONS OF FUTURE
13 CONTRIBUTIONS.—Any actuarial projection
14 of plan assets shall assume—

15 “(I) reasonably anticipated em-
16 ployer contributions for the current
17 and succeeding plan years, assuming
18 that the terms of the one or more col-
19 lective bargaining agreements pursu-
20 ant to which the plan is maintained
21 for the current plan year continue in
22 effect for succeeding plan years, or

23 “(II) that employer contributions
24 for the most recent plan year will con-
25 tinue indefinitely, but only if the plan

1 actuary determines there have been no
2 significant demographic changes that
3 would make such assumption unrea-
4 sonable.

5 “(C) PENALTY FOR FAILURE TO SECURE
6 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
7 ure of the plan’s actuary to certify the plan’s
8 status under this subsection by the date speci-
9 fied in subparagraph (A) shall be treated for
10 purposes of section 502(c)(2) as a failure or re-
11 fusal by the plan administrator to file the an-
12 nual report required to be filed with the Sec-
13 retary under section 101(b)(4).

14 “(D) NOTICE.—In any case in which a
15 multiemployer plan is certified to be in endan-
16 gered or critical status under subparagraph (A),
17 the plan sponsor shall, not later than 30 days
18 after the date of the certification, provide notifi-
19 cation of the endangered or critical status to
20 the participants and beneficiaries, the bar-
21 gaining parties, the Pension Benefit Guaranty
22 Corporation, the Secretary of the Treasury, and
23 the Secretary.

1 “(c) FUNDING IMPROVEMENT PLAN MUST BE
2 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
3 STATUS.—

4 “(1) IN GENERAL.—In any case in which a
5 multiemployer plan is in endangered status for a
6 plan year, the plan sponsor, in accordance with this
7 subsection—

8 “(A) shall adopt a funding improvement
9 plan not later than 240 days following the re-
10 quired date for the actuarial certification of en-
11 dangered status under subsection (b)(3)(A),
12 and

13 “(B) within 30 days after the adoption of
14 the funding improvement plan—

15 “(i) in the case of a plan in seriously
16 endangered status, shall provide to the
17 bargaining parties 1 or more schedules
18 showing revised benefit structures, revised
19 contribution structures, or both, which, if
20 adopted, may reasonably be expected to en-
21 able the multiemployer plan to meet the
22 applicable requirements under paragraph
23 (3) in accordance with the funding im-
24 provement plan, including a description of
25 the reductions in future benefit accruals

1 and increases in contributions that the
2 plan sponsor determines are reasonably
3 necessary to meet the applicable require-
4 ments if the plan sponsor assumes that
5 there are no increases in contributions
6 under the plan other than the increases
7 necessary to meet the applicable require-
8 ments after future benefit accruals have
9 been reduced to the maximum extent per-
10 mitted by law, and

11 “(ii) may, if the plan sponsor deems
12 appropriate, prepare and provide the bar-
13 gaining parties with additional information
14 relating to contribution rates or benefit re-
15 ductions, alternative schedules, or other in-
16 formation relevant to achieving the re-
17 quirements under paragraph (3) in accord-
18 ance with the funding improvement plan.

19 “(2) EXCEPTION FOR YEARS AFTER PROCESS
20 BEGINS.—Paragraph (1) shall not apply to a plan
21 year if such year is in a funding plan adoption pe-
22 riod or funding improvement period by reason of the
23 plan being in endangered status for a preceding plan
24 year. For purposes of this section, such preceding
25 plan year shall be the initial determination year with

1 respect to the funding improvement plan to which it
2 relates.

3 “(3) FUNDING IMPROVEMENT PLAN.—For pur-
4 poses of this section—

5 “(A) IN GENERAL.—A funding improve-
6 ment plan is a plan which consists of the ac-
7 tions, including options or a range of options to
8 be proposed to the bargaining parties, which,
9 under reasonable actuarial assumptions, will re-
10 sult in the plan meeting the requirements of
11 this paragraph.

12 “(B) PLANS OTHER THAN SERIOUSLY EN-
13 DANGERED PLANS.—In the case of plan not in
14 seriously endangered status, the requirements
15 of this paragraph are met if the plan’s funded
16 percentage as of the close of the funding im-
17 provement period exceeds the sum of—

18 “(i) such percentage as of the begin-
19 ning of such period, plus

20 “(ii) 10 percent of the percentage
21 under clause (i).

22 “(C) SERIOUSLY ENDANGERED PLANS.—
23 In the case of a plan in seriously endangered
24 status, the requirements of this paragraph are
25 met if—

1 “(i) the plan’s funded percentage as
2 of the close of the funding improvement
3 period equals or exceeds the percentage
4 which is equal to the sum of—

5 “(I) such percentage as of the
6 beginning of such period, plus

7 “(II) 33 percent of the difference
8 between 100 percent and the percent-
9 age under subclause (I), and

10 “(ii) there is no accumulated funding
11 deficiency for any plan year during the
12 funding improvement period (taking into
13 account any extension of amortization peri-
14 ods under section 304(d)).

15 “(4) FUNDING IMPROVEMENT PERIOD.—For
16 purposes of this section—

17 “(A) IN GENERAL.—The funding improve-
18 ment period for any funding improvement plan
19 adopted pursuant to this subsection is the 10-
20 year period beginning on the first day of the
21 first plan year of the multiemployer plan begin-
22 ning after the earlier of—

23 “(i) the second anniversary of the
24 date of the adoption of the funding im-
25 provement plan, or

1 “(ii) the expiration of the collective
2 bargaining agreements in effect on the due
3 date for the actuarial certification of en-
4 dangered status for the initial determina-
5 tion year under subsection (b)(3)(A) and
6 covering, as of such due date, at least 75
7 percent of the active participants in such
8 multiemployer plan.

9 “(B) COORDINATION WITH CHANGES IN
10 STATUS.—

11 “(i) PLANS NO LONGER IN ENDAN-
12 GERED STATUS.—If the plan’s actuary cer-
13 tifies under subsection (b)(3)(A) for a plan
14 year in any funding plan adoption period
15 or funding improvement period that the
16 plan is no longer in endangered status and
17 is not in critical status, the funding plan
18 adoption period or funding improvement
19 period, whichever is applicable, shall end as
20 of the close of the preceding plan year.

21 “(ii) PLANS IN CRITICAL STATUS.—If
22 the plan’s actuary certifies under sub-
23 section (b)(3)(A) for a plan year in any
24 funding plan adoption period or funding
25 improvement period that the plan is in

1 critical status, the funding plan adoption
2 period or funding improvement period,
3 whichever is applicable, shall end as of the
4 close of the plan year preceding the first
5 plan year in the rehabilitation period with
6 respect to such status.

7 “(C) PLANS IN ENDANGERED STATUS AT
8 END OF PERIOD.—If the plan’s actuary certifies
9 under subsection (b)(3)(A) for the first plan
10 year following the close of the period described
11 in subparagraph (A) that the plan is in endan-
12 gered status, the provisions of this subsection
13 and subsection (d) shall be applied as if such
14 first plan year were an initial determination
15 year, except that the plan may not be amended
16 in a manner inconsistent with the funding im-
17 provement plan in effect for the preceding plan
18 year until a new funding improvement plan is
19 adopted.

20 “(5) SPECIAL RULES FOR CERTAIN UNDER-
21 FUNDED PLANS.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), if the funded percentage of
24 a plan in seriously endangered status was 80
25 percent or less as of the beginning of the initial

1 determination year, the following rules shall
2 apply in determining whether the requirements
3 of paragraph (3)(C)(i) are met:

4 “(i) The plan’s funded percentage as
5 of the close of the funding improvement
6 period must equal or exceed a percentage
7 which is equal to the sum of—

8 “(I) such percentage as of the
9 beginning of such period, plus

10 “(II) 20 percent of the difference
11 between 100 percent and the percent-
12 age under subclause (I).

13 “(ii) The funding improvement period
14 under paragraph (4)(A) shall be 15 years
15 rather than 10 years.

16 “(B) SPECIAL RULES FOR PLANS WITH
17 FUNDED PERCENTAGE OVER 70 PERCENT.—If
18 the funded percentage described in subpara-
19 graph (A) was more than 70 percent but less
20 than 80 percent as of the beginning of the ini-
21 tial determination year—

22 “(i) subparagraph (A) shall only apply
23 if the plan’s actuary certifies, within 30
24 days after the certification under sub-
25 section (b)(3)(A) for the initial determina-

1 tion year, that, based on the terms of the
2 plan and the collective bargaining agree-
3 ments in effect at the time of such certifi-
4 cation, the plan is not projected to meet
5 the requirements of paragraph (3)C)(i)
6 without regard to this paragraph, and

7 “(ii) if there is a certification under
8 clause (i), the plan may, in formulating its
9 funding improvement plan, only take into
10 account the rules of subparagraph (A) for
11 plan years in the funding improvement pe-
12 riod beginning on or before the date on
13 which the last of the collective bargaining
14 agreements described in paragraph
15 (4)(A)(ii) expires.

16 Notwithstanding clause (ii), if for any plan year
17 ending after the date described in clause (ii) the
18 plan actuary certifies (at the time of the annual
19 certification under subsection (b)(3)(A) for such
20 plan year) that, based on the terms of the plan
21 and collective bargaining agreements in effect
22 at the time of that annual certification, the plan
23 is not projected to be able to meet the require-
24 ments of paragraph (3)C)(i) without regard to
25 this paragraph, the plan may continue to as-

1 sume for such year that the funding improve-
2 ment period is 15 years rather than 10 years.

3 “(6) UPDATES TO FUNDING IMPROVEMENT
4 PLAN AND SCHEDULES.—

5 “(A) FUNDING IMPROVEMENT PLAN.—The
6 funding improvement plan may be periodically
7 updated by the plan sponsor. A copy of any up-
8 dated funding improvement plan shall be filed
9 with the plan’s annual report under section
10 104.

11 “(B) SCHEDULES.—The plan sponsor may
12 periodically update any schedule of contribution
13 rates provided under this subsection to reflect
14 the experience of the plan.

15 “(C) DURATION OF SCHEDULE.—A sched-
16 ule of contribution rates provided by the plan
17 sponsor and relied upon by bargaining parties
18 in negotiating a collective bargaining agreement
19 shall remain in effect for the duration of that
20 collective bargaining agreement.

21 “(7) PENALTY IF NO FUNDING IMPROVEMENT
22 PLAN ADOPTED.—A failure of the plan sponsor to
23 adopt a funding improvement plan by the date speci-
24 fied in paragraph (1)(A) shall be treated for pur-
25 poses of section 502(c)(2) as a failure or refusal by

1 the plan administrator to file the annual report re-
2 quired to be filed with the Secretary under section
3 101(b)(4).

4 “(8) FUNDING PLAN ADOPTION PERIOD.—For
5 purposes of this section, the term ‘funding plan
6 adoption period’ means the period beginning on the
7 date of the certification under subsection (b)(3)(A)
8 for the initial determination year and ending on the
9 day before the first day of the funding improvement
10 period.

11 “(d) RULES FOR OPERATION OF PLAN DURING
12 ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO
13 MEET REQUIREMENTS.—

14 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-
15 RIOD.—During the plan adoption period—

16 “(A) the plan sponsor may not accept a
17 collective bargaining agreement or participation
18 agreement with respect to the multiemployer
19 plan 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 “(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 of the In-
12 ternal Revenue Code of 1986 or to comply with
13 other applicable law, and

14 “(C) in the case of a plan in seriously en-
15 dangered status, the plan sponsor shall take all
16 reasonable actions which are consistent with the
17 terms of the plan and applicable law and which
18 are expected, based on reasonable assumptions,
19 to achieve—

20 “(i) an increase in the plan’s funded
21 percentage, and

22 “(ii) postponement of an accumulated
23 funding deficiency for at least 1 additional
24 plan year.

1 Actions under subparagraph (C) include applications
2 for extensions of amortization periods under section
3 304(d), use of the shortfall funding method in mak-
4 ing funding standard account computations, amend-
5 ments to the plan's benefit structure, reductions in
6 future benefit accruals, and other reasonable actions
7 consistent with the terms of the plan and applicable
8 law

9 “(2) COMPLIANCE WITH FUNDING IMPROVE-
10 MENT PLAN.—

11 “(A) IN GENERAL.—A plan may not be
12 amended after the date of the adoption of a
13 funding improvement plan under subsection (c)
14 so as to be inconsistent with the funding im-
15 provement plan.

16 “(B) NO REDUCTION IN CONTRIBU-
17 TIONS.—A plan sponsor may not during any
18 funding improvement period accept a collective
19 bargaining agreement or participation agree-
20 ment with respect to the multiemployer plan
21 that provides for—

22 “(i) a reduction in the level of con-
23 tributions for any participants,

24 “(ii) a suspension of contributions
25 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.—Not-
2 withstanding section 4971(g) of the Internal Rev-
3 enue Code of 1986, if a plan fails to meet the re-
4 quirements of subsection (c)(3) by the end of the
5 funding improvement period, the plan shall be treat-
6 ed as having an accumulated funding deficiency for
7 purposes of section 4971 of such Code for the last
8 plan year in such period (and each succeeding plan
9 year until such requirements are met) in an amount
10 equal to the greater of the amount of the contribu-
11 tions necessary to meet such requirements or the
12 amount of such accumulated funding deficiency
13 without regard to this paragraph.

14 “(e) REHABILITATION PLAN MUST BE ADOPTED
15 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

16 “(1) IN GENERAL.—In any case in which a
17 multiemployer plan is in critical status for a plan
18 year, the plan sponsor, in accordance with this
19 subsection—

20 “(A) shall adopt a rehabilitation plan not
21 later than 240 days following the required date
22 for the actuarial certification of critical status
23 under subsection (b)(3)(A), and

24 “(B) within 30 days after the adoption of
25 the rehabilitation plan—

1 “(i) shall provide to the bargaining
2 parties 1 or more schedules showing re-
3 vised benefit structures, revised contribu-
4 tion structures, or both, which, if adopted,
5 may reasonably be expected to enable the
6 multiemployer plan to emerge from critical
7 status in accordance with the rehabilitation
8 plan, and

9 “(ii) may, if the plan sponsor deems
10 appropriate, prepare and provide the bar-
11 gaining parties with additional information
12 relating to contribution rates or benefit re-
13 ductions, alternative schedules, or other in-
14 formation relevant to emerging from crit-
15 ical status in accordance with the funding
16 improvement plan.

17 The schedule or schedules described in subparagraph
18 (B)(i) shall reflect reductions in future benefit ac-
19 cruals and increases in contributions that the plan
20 sponsor determines are reasonably necessary to
21 emerge from critical status. One schedule shall be
22 designated as the default schedule and such schedule
23 shall assume that there are no increases in contribu-
24 tions under the plan other than the increases nec-
25 essary to emerge from critical status after future

1 benefit accruals and other benefits (other than bene-
2 fits the reduction or elimination of which are not
3 permitted under section 204(g)) have been reduced
4 to the maximum extent permitted by law.

5 “(2) EXCEPTION FOR YEARS AFTER PROCESS
6 BEGINS.—Paragraph (1) shall not apply to a plan
7 year if such year is in a rehabilitation plan adoption
8 period or rehabilitation period by reason of the plan
9 being in critical status for a preceding plan year.
10 For purposes of this section, such preceding plan
11 year shall be the initial critical year with respect to
12 the rehabilitation plan to which it relates.

13 “(3) REHABILITATION PLAN.—For purposes of
14 this section—

15 “(A) IN GENERAL.—A rehabilitation plan
16 is a plan which consists of—

17 “(i) actions which are certain to en-
18 able, under reasonable actuarial assump-
19 tions, the plan to cease to be in critical
20 status by the end of the rehabilitation pe-
21 riod and may include reductions in plan
22 expenditures (including plan mergers and
23 consolidations), reductions in future ben-
24 efit accruals or increases in contributions,

1 if agreed to by the bargaining parties, or
2 any combination of such actions, or

3 “(ii) if the plan sponsor determines
4 that, based on reasonable actuarial as-
5 sumptions and upon exhaustion of all rea-
6 sonable measures, the plan can not reason-
7 ably be expected to emerge from critical
8 status by the end of the rehabilitation pe-
9 riod, reasonable measures to emerge from
10 critical status at a later time or to forestall
11 possible insolvency (within the meaning of
12 section 4245).

13 Such plan shall include the schedules required
14 to be provided under paragraph (1)(B)(i). If
15 clause (ii) applies, such plan shall set forth the
16 alternatives considered, explain why the plan is
17 not reasonably expected to emerge from critical
18 status by the end of the rehabilitation period,
19 and specify when, if ever, the plan is expected
20 to emerge from critical status in accordance
21 with the rehabilitation plan.

22 “(B) UPDATES TO REHABILITATION PLAN
23 AND SCHEDULES.—

24 “(i) REHABILITATION PLAN.—The
25 plan sponsor shall annually update the re-

1 habilitation plan and shall file the update
2 with the plan’s annual report under section
3 104.

4 “(ii) SCHEDULES.—The plan sponsor
5 may periodically update any schedule of
6 contribution rates provided under this sub-
7 section to reflect the experience of the
8 plan, except that the schedule or schedules
9 described in paragraph (1)(B)(i) shall be
10 updated at least once every 3 years.

11 “(iii) DURATION OF SCHEDULE.—A
12 schedule of contribution rates provided by
13 the plan sponsor and relied upon by bar-
14 gaining parties in negotiating a collective
15 bargaining agreement shall remain in ef-
16 fect for the duration of that collective bar-
17 gaining agreement.

18 “(C) DEFAULT SCHEDULE.—If the collec-
19 tive bargaining agreement providing for con-
20 tributions under a multiemployer plan that was
21 in effect at the time the plan entered critical
22 status expires and, after receiving a schedule
23 from the plan sponsor under paragraph
24 (1)(B)(i), the bargaining parties have not
25 adopted a collective bargaining agreement with

1 terms consistent with such a schedule, the de-
2 fault schedule described in the last sentence of
3 paragraph (1) shall go into effect with respect
4 to those bargaining parties.

5 “(4) REHABILITATION PERIOD.—For purposes
6 of this section—

7 “(A) IN GENERAL.—The rehabilitation pe-
8 riod for a plan in critical status is the 10-year
9 period beginning on the first day of the first
10 plan year of the multiemployer plan following
11 the earlier of—

12 “(i) the second anniversary of the
13 date of the adoption of the rehabilitation
14 plan, or

15 “(ii) the expiration of the collective
16 bargaining agreements in effect on the
17 date of the due date for the actuarial cer-
18 tification of critical status for the initial
19 critical year under subsection (a)(1) and
20 covering, as of such date at least 75 per-
21 cent of the active participants in such mul-
22 tiemployer plan.

23 If a plan emerges from critical status as pro-
24 vided under subparagraph (B) before the end of
25 such 10-year period, the rehabilitation period

1 shall end with the plan year preceding the plan
2 year for which the determination under sub-
3 paragraph (B) is made.

4 “(B) EMERGENCY.—A plan in critical sta-
5 tus shall remain in such status until a plan
6 year for which the plan actuary certifies, in ac-
7 cordance with subsection (b)(3)(A), that the
8 plan is not projected to have an accumulated
9 funding deficiency for the plan year or any of
10 the 9 succeeding plan years, without regard to
11 use of the shortfall method or any extension of
12 amortization periods under section 304(d).

13 “(5) PENALTY IF NO REHABILITATION PLAN
14 ADOPTED.—A failure of a plan sponsor to adopt a
15 rehabilitation plan by the date specified in para-
16 graph (1)(A) shall be treated for purposes of section
17 502(c)(2) as a failure or refusal by the plan admin-
18 istrator to file the annual report required to be filed
19 with the Secretary under section 101(b)(4).

20 “(6) REHABILITATION PLAN ADOPTION PE-
21 RIOD.—For purposes of this section, the term ‘reha-
22 bilitation plan adoption period’ means the period be-
23 ginning on the date of the certification under sub-
24 section (b)(3)(A) for the initial critical year and end-

1 ing on the day before the first day of the rehabilita-
2 tion period.

3 “(f) RULES FOR OPERATION OF PLAN DURING
4 ADOPTION AND REHABILITATION PERIOD.—

5 “(1) COMPLIANCE WITH REHABILITATION
6 PLAN.—

7 “(A) IN GENERAL.—A plan may not be
8 amended after the date of the adoption of a re-
9 habilitation plan under subsection (e) so as to
10 be inconsistent with the rehabilitation plan.

11 “(B) SPECIAL RULES FOR BENEFIT IN-
12 CREASES.—A plan may not be amended after
13 the date of the adoption of a rehabilitation plan
14 under subsection (e) so as to increase benefits,
15 including future benefit accruals, unless the
16 plan actuary certifies that such increase is paid
17 for out of additional contributions not con-
18 templated by the rehabilitation plan, and, after
19 taking into account the benefit increase, the
20 multiemployer plan still is reasonably expected
21 to emerge from critical status by the end of the
22 rehabilitation period on the schedule con-
23 templated in the rehabilitation plan.

24 “(2) RESTRICTION ON LUMP SUMS AND SIMI-
25 LAR BENEFITS.—

1 “(A) IN GENERAL.—Effective on the date
2 the notice of certification of the plan’s critical
3 status for the initial critical year under sub-
4 section (b)(3)(D) is sent, and notwithstanding
5 section 204(g), the plan shall not pay—

6 “(i) any payment, in excess of the
7 monthly amount paid under a single life
8 annuity (plus any social security supple-
9 ments described in the last sentence of sec-
10 tion 204(b)(1)(G)),

11 “(ii) any payment for the purchase of
12 an irrevocable commitment from an insurer
13 to pay benefits, and

14 “(iii) any other payment specified by
15 the Secretary of the Treasury by regula-
16 tions.

17 “(B) EXCEPTION.—Subparagraph (A)
18 shall not apply to a benefit which under section
19 203(e) may be immediately distributed without
20 the consent of the participant.

21 “(3) ADJUSTMENTS DISREGARDED IN WITH-
22 DRAWAL LIABILITY DETERMINATION.—Any benefit
23 reductions under this subsection shall be disregarded
24 in determining a plan’s unfunded vested benefits for

1 purposes of determining an employer's withdrawal li-
2 ability under section 4201.

3 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-
4 RIOD.—During the rehabilitation plan adoption
5 period—

6 “(A) the plan sponsor may not accept a
7 collective bargaining agreement or participation
8 agreement with respect to the multiemployer
9 plan that provides for—

10 “(i) a reduction in the level of con-
11 tributions for any participants,

12 “(ii) a suspension of contributions
13 with respect to any period of service, or

14 “(iii) any new direct or indirect exclu-
15 sion of younger or newly hired employees
16 from plan participation, and

17 “(B) no amendment of the plan which in-
18 creases the liabilities of the plan by reason of
19 any increase in benefits, any change in the ac-
20 currence of benefits, or any change in the rate at
21 which benefits become nonforfeitable under the
22 plan may be adopted unless the amendment is
23 required as a condition of qualification under
24 part I of subchapter D of chapter 1 of the In-

1 ternal Revenue Code of 1986 or to comply with
2 other applicable law.

3 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
4 DECISIONS.—If, within 60 days of the due date for adop-
5 tion of a funding improvement plan under subsection (c)
6 or a rehabilitation plan under subsection (e), the plan
7 sponsor of a plan in endangered status or a plan in critical
8 status has not agreed on a funding improvement plan or
9 rehabilitation plan, then any member of the board or
10 group that constitutes the plan sponsor may require that
11 the plan sponsor enter into an expedited dispute resolution
12 procedure for the development and adoption of a funding
13 improvement plan or rehabilitation plan.

14 “(h) NONBARGAINED PARTICIPATION.—

15 “(1) BOTH BARGAINED AND NONBARGAINED
16 EMPLOYEE-PARTICIPANTS.—In the case of an em-
17 ployer that contributes to a multiemployer plan with
18 respect to both employees who are covered by one or
19 more collective bargaining agreements and to em-
20 ployees who are not so covered, if the plan is in en-
21 dangered status or in critical status, benefits of and
22 contributions for the nonbargained employees, in-
23 cluding surcharges on those contributions, shall be
24 determined as if those nonbargained employees were
25 covered under the first to expire of the employer’s

1 collective bargaining agreements in effect when the
2 plan entered endangered or critical status.

3 “(2) NONBARGAINED EMPLOYEES ONLY.—In
4 the case of an employer that contributes to a multi-
5 employer plan only with respect to employees who
6 are not covered by a collective bargaining agreement,
7 this section shall be applied as if the employer were
8 the bargaining parties, and its participation agree-
9 ment with the plan was a collective bargaining
10 agreement with a term ending on the first day of the
11 plan year beginning after the employer is provided
12 the schedule or schedules described in subsections
13 (c) and (e).

14 “(3) EMPLOYEES COVERED BY A COLLECTIVE
15 BARGAINING AGREEMENT.—The determination as to
16 whether an employee covered by a collective bar-
17 gaining agreement for purposes of this section shall
18 be made without regard to the special rule in Treas-
19 ury Regulation section 1.410(b)–6(d)(ii)(D).

20 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
21 poses of this section—

22 “(1) BARGAINING PARTY.—The term ‘bar-
23 gaining party’ means, in connection with a multiem-
24 ployer plan—

1 “(A) an employer that has an obligation to
2 contribute under the plan, and

3 “(B) an employee organization which, for
4 purposes of collective bargaining, represents
5 plan participants employed by such an em-
6 ployer.

7 “(2) FUNDED PERCENTAGE.—The term ‘fund-
8 ed percentage’ means the percentage equal to a
9 fraction—

10 “(A) the numerator of which is the value
11 of the plan’s assets, as determined under sec-
12 tion 304(c)(2), and

13 “(B) the denominator of which is the ac-
14 crued liability of the plan, determined using ac-
15 tuarial assumptions described in section
16 304(c)(3).

17 “(3) ACCUMULATED FUNDING DEFICIENCY.—
18 The term ‘accumulated funding deficiency’ has the
19 meaning given such term in section 304(a).

20 “(4) ACTIVE PARTICIPANT.—The term ‘active
21 participant’ means, in connection with a multiem-
22 ployer plan, a participant who is in covered service
23 under the plan.

24 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
25 tive participant’ means, in connection with a multi-

1 employer plan, a participant, or the beneficiary or
2 alternate payee of a participant, who—

3 “(A) is not in covered service under the
4 plan, and

5 “(B) is in pay status under the plan or has
6 a nonforfeitable right to benefits under the
7 plan.

8 “(6) PAY STATUS.—A person is in pay status
9 under a multiemployer plan if—

10 “(A) at any time during the current plan
11 year, such person is a participant or beneficiary
12 under the plan and is paid an early, late, nor-
13 mal, or disability retirement benefit under the
14 plan (or a death benefit under the plan related
15 to a retirement benefit), or

16 “(B) to the extent provided in regulations
17 of the Secretary of the Treasury, such person
18 is entitled to such a benefit under the plan.

19 “(7) OBLIGATION TO CONTRIBUTE.—The term
20 ‘obligation to contribute’ has the meaning given such
21 term under section 4212(a).

22 “(8) ACTUARIAL METHOD.—Notwithstanding
23 any other provision of this section, the actuary’s de-
24 terminations with respect to a plan’s normal cost,
25 actuarial accrued liability, and improvements in a

1 plan's funded percentage under this section shall be
2 based upon the unit credit funding method (whether
3 or not that method is used for the plan's actuarial
4 valuation).”.

5 (b) CAUSE OF ACTION TO COMPEL ADOPTION OF
6 FUNDING IMPROVEMENT OR REHABILITATION PLAN.—
7 Section 502(a) of the Employee Retirement Income Secu-
8 rity Act of 1974 is amended by striking “or” at the end
9 of paragraph (8), by striking the period at the end of para-
10 graph (9) and inserting “; or” and by adding at the end
11 the following:

12 “(10) in the case of a multiemployer plan that
13 has been certified by the actuary to be in endan-
14 gered or critical status under section 305, if the plan
15 sponsor has not adopted a funding improvement or
16 rehabilitation plan under subsection (c) or (e) of
17 that section by the deadline established in that sec-
18 tion, by an employer that has an obligation to con-
19 tribute with respect to the multiemployer plan or an
20 employee organization that represents active partici-
21 pants in the multiemployer plan, for an order com-
22 pelling the plan sponsor to adopt a funding improve-
23 ment or rehabilitation plan.”.

24 (c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971
25 of the Internal Revenue Code of 1986 is amended by re-

1 designating subsection (g) as subsection (h), and inserting
2 after subsection (f) the following:

3 “(g) **MULTIEMPLOYER PLANS IN CRITICAL STA-**
4 **TUS.**—No tax shall be imposed under this section for a
5 taxable year with respect to a multiemployer plan if, for
6 the plan years ending with or within the taxable year, the
7 plan is in critical status pursuant to section 305 of the
8 Employee Retirement Income Security Act of 1974. This
9 subsection shall only apply if the plan adopts a rehabilita-
10 tion plan in accordance with section 305(e) of such Act
11 and complies with such rehabilitation plan (and any modi-
12 fications of the plan).”.

13 (d) **NO ADDITIONAL CONTRIBUTIONS REQUIRED.**—

14 (1) Section 302(b) of the Employee Retirement
15 Income Security Act of 1974, as amended by this
16 Act , is amended by adding at the end the following
17 new paragraph:

18 “(3) **MULTIEMPLOYER PLANS IN CRITICAL STA-**
19 **TUS.**—Subparagraph (A) shall not apply in the case
20 of a multiemployer plan for any plan year in which
21 the plan is in critical status pursuant to section 305.
22 This paragraph shall only apply if the plan adopts
23 a rehabilitation plan in accordance with section
24 305(e) of such Act and complies with such rehabili-
25 tation plan (and any modifications of the plan).”.

1 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
2 **TIEMPLOYER PLANS.**

3 (a) ADVANCE DETERMINATION OF IMPENDING IN-
4 SOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the
5 Employee Retirement Income Security Act of 1974 (29
6 U.S.C. 1426(d)(1)) is amended—

7 (1) by striking “3 plan years” the second place
8 it appears and inserting “5 plan years”; and

9 (2) by adding at the end the following new sen-
10 tence: “If the plan sponsor makes such a determina-
11 tion that the plan will be insolvent in any of the next
12 5 plan years, the plan sponsor shall make the com-
13 parison under this paragraph at least annually until
14 the plan sponsor makes a determination that the
15 plan will not be insolvent in any of the next 5 plan
16 years.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply with respect to determinations
19 made in plan years beginning after 2006.

20 **PART II—AMENDMENTS TO INTERNAL REVENUE**
21 **CODE OF 1986**

22 **SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
23 **BENEFIT PLANS.**

24 (a) IN GENERAL.—Subpart A of part III of sub-
25 chapter D of chapter 1 of the Internal Revenue Code of

1 1986 (as added by this Act) is amended by inserting after
2 section 430 the following new section:

3 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**
4 **PLOYER PLANS.**

5 “(a) IN GENERAL.—For purposes of section 412, the
6 accumulated funding deficiency of a multiemployer plan
7 for any plan year is—

8 “(1) except as provided in paragraph (2), the
9 amount, determined as of the end of the plan year,
10 equal to the excess (if any) of the total charges to
11 the funding standard account of the plan for all plan
12 years (beginning with the first plan year for which
13 this part applies to the plan) over the total credits
14 to such account for such years, and

15 “(2) if the multiemployer plan is in reorganiza-
16 tion for any plan year, the accumulated funding de-
17 ficiency of the plan determined under section 4243
18 of the Employee Retirement Income Security Act of
19 1974.

20 “(b) FUNDING STANDARD ACCOUNT.—

21 “(1) ACCOUNT REQUIRED.—Each multiem-
22 ployer plan to which this part applies shall establish
23 and maintain a funding standard account. Such ac-
24 count shall be credited and charged solely as pro-
25 vided in this section.

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

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

6 “(B) the amounts necessary to amortize in
7 equal annual installments (until fully amor-
8 tized)—

9 “(i) separately, with respect to each
10 plan year, the net increase (if any) in un-
11 funded past service liability under the plan
12 arising from plan amendments adopted in
13 such year, over a period of 15 plan years,

14 “(ii) separately, with respect to each
15 plan year, the net experience loss (if any)
16 under the plan, over a period of 15 plan
17 years, and

18 “(iii) separately, with respect to each
19 plan year, the net loss (if any) resulting
20 from changes in actuarial assumptions
21 used under the plan, over a period of 15
22 plan years,

23 “(C) the amount necessary to amortize
24 each waived funding deficiency (within the
25 meaning of section 412(d)(3)) for each prior

1 plan year in equal annual installments (until
2 fully amortized) over a period of 15 plan years,

3 “(D) the amount necessary to amortize in
4 equal annual installments (until fully amor-
5 tized) over a period of 5 plan years any amount
6 credited to the funding standard account under
7 section 412(b)(3)(D) (as in effect on the day
8 before the date of the enactment of the Defined
9 Benefit Security Act of 2005), and

10 “(E) the amount necessary to amortize in
11 equal annual installments (until fully amor-
12 tized) over a period of 20 years the contribu-
13 tions which would be required to be made under
14 the plan but for the provisions of section
15 412(c)(7)(A)(i)(I) (as in effect on the day be-
16 fore the date of the enactment of the Defined
17 Benefit Security Act of 2005).

18 “(3) CREDITS TO ACCOUNT.—For a plan year,
19 the funding standard account shall be credited with
20 the sum of—

21 “(A) the amount considered contributed by
22 the employer to or under the plan for the plan
23 year,

1 “(B) the amount necessary to amortize in
2 equal annual installments (until fully amor-
3 tized)—

4 “(i) separately, with respect to each
5 plan year, the net decrease (if any) in un-
6 funded past service liability under the plan
7 arising from plan amendments adopted in
8 such year, over a period of 15 plan years,

9 “(ii) separately, with respect to each
10 plan year, the net experience gain (if any)
11 under the plan, over a period of 15 plan
12 years, and

13 “(iii) separately, with respect to each
14 plan year, the net gain (if any) resulting
15 from changes in actuarial assumptions
16 used under the plan, over a period of 15
17 plan years,

18 “(C) the amount of the waived funding de-
19 ficiency (within the meaning of section
20 412(d)(3)) for the plan year, and

21 “(D) in the case of a plan year for which
22 the accumulated funding deficiency is deter-
23 mined under the funding standard account if
24 such plan year follows a plan year for which
25 such deficiency was determined under the alter-

1 native minimum funding standard under section
2 412(g) (as in effect on the day before the date
3 of the enactment of the Defined Benefit Secu-
4 rity Act of 2005), the excess (if any) of any
5 debit balance in the funding standard account
6 (determined without regard to this subpara-
7 graph) over any debit balance in the alternative
8 minimum funding standard account.

9 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
10 ORTIZED TO PLAN YEARS BEFORE 2007.—In the case
11 of any amount amortized under section 412(b) (as
12 in effect on the day before the date of the enactment
13 of the Defined Benefit Security Act of 2005) over
14 any period beginning with a plan year beginning be-
15 fore 2007, in lieu of the amortization described in
16 paragraphs (2)(B) and (3)(B), such amount shall
17 continue to be amortized under such section as so in
18 effect.

19 “(5) COMBINING AND OFFSETTING AMOUNTS
20 TO BE AMORTIZED.—Under regulations prescribed
21 by the Secretary, amounts required to be amortized
22 under paragraph (2) or paragraph (3), as the case
23 may be—

24 “(A) may be combined into one amount
25 under such paragraph to be amortized over a

1 period determined on the basis of the remaining
2 amortization period for all items entering into
3 such combined amount, and

4 “(B) may be offset against amounts re-
5 quired to be amortized under the other such
6 paragraph, with the resulting amount to be am-
7 ortized over a period determined on the basis of
8 the remaining amortization periods for all items
9 entering into whichever of the two amounts
10 being offset is the greater.

11 “(6) INTEREST.—Except as provided in sub-
12 section (c)(9), the funding standard account (and
13 items therein) shall be charged or credited (as deter-
14 mined under regulations prescribed by the Secretary
15 of the Treasury) with interest at the appropriate
16 rate consistent with the rate or rates of interest used
17 under the plan to determine costs.

18 “(7) CERTAIN AMORTIZATION CHARGES AND
19 CREDITS.—In the case of a plan which, immediately
20 before the date of the enactment of the Multiem-
21 ployer Pension Plan Amendments Act of 1980, was
22 a multiemployer plan (within the meaning of section
23 414(f) as in effect immediately before such date)—

24 “(A) any amount described in paragraph
25 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-

1 section which arose in a plan year beginning be-
2 fore such date shall be amortized in equal an-
3 nual installments (until fully amortized) over 40
4 plan years, beginning with the plan year in
5 which the amount arose;

6 “(B) any amount described in paragraph
7 (2)(B)(iv) or (3)(B)(ii) of this subsection which
8 arose in a plan year beginning before such date
9 shall be amortized in equal annual installments
10 (until fully amortized) over 20 plan years, be-
11 ginning with the plan year in which the amount
12 arose;

13 “(C) any change in past service liability
14 which arises during the period of 3 plan years
15 beginning on or after such date, and results
16 from a plan amendment adopted before such
17 date, shall be amortized in equal annual install-
18 ments (until fully amortized) over 40 plan
19 years, beginning with the plan year in which the
20 change arises; and

21 “(D) any change in past service liability
22 which arises during the period of 2 plan years
23 beginning on or after such date, and results
24 from the changing of a group of participants

1 from one benefit level to another benefit level
2 under a schedule of plan benefits which—

3 “(i) was adopted before such date,
4 and

5 “(ii) was effective for any plan partici-
6 pant before the beginning of the first plan
7 year beginning on or after such date,
8 shall be amortized in equal annual installments
9 (until fully amortized) over 40 plan years, be-
10 ginning with the plan year in which the change
11 arises.

12 “(8) SPECIAL RULES RELATING TO CHARGES
13 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
14 For purposes of this part—

15 “(A) WITHDRAWAL LIABILITY.—Any
16 amount received by a multiemployer plan in
17 payment of all or part of an employer’s with-
18 drawal liability under part 1 of subtitle E of
19 title IV of the Employee Retirement Income Se-
20 curity Act of 1974 shall be considered an
21 amount contributed by the employer to or
22 under the plan. The Secretary may prescribe by
23 regulation additional charges and credits to a
24 multiemployer plan’s funding standard account
25 to the extent necessary to prevent withdrawal li-

1 ability payments from being unduly reflected as
2 advance funding for plan liabilities.

3 “(B) ADJUSTMENTS WHEN A MULTIEM-
4 PLOYER PLAN LEAVES REORGANIZATION.—If a
5 multiemployer plan is not in reorganization in
6 the plan year but was in reorganization in the
7 immediately preceding plan year, any balance in
8 the funding standard account at the close of
9 such immediately preceding plan year—

10 “(i) shall be eliminated by an offset-
11 ting credit or charge (as the case may be),
12 but

13 “(ii) shall be taken into account in
14 subsequent plan years by being amortized
15 in equal annual installments (until fully
16 amortized) over 30 plan years.

17 The preceding sentence shall not apply to the
18 extent of any accumulated funding deficiency
19 under section 4243(a) of such Act as of the end
20 of the last plan year that the plan was in reor-
21 ganization.

22 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
23 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
24 FUND.—Any amount paid by a plan during a
25 plan year to the Pension Benefit Guaranty Cor-

1 poration pursuant to section 4222 of such Act
2 or to a fund exempt under section 501(c)(22)
3 pursuant to section 4223 of such Act shall re-
4 duce the amount of contributions considered re-
5 ceived by the plan for the plan year.

6 “(D) INTERIM WITHDRAWAL LIABILITY
7 PAYMENTS.—Any amount paid by an employer
8 pending a final determination of the employer’s
9 withdrawal liability under part 1 of subtitle E
10 of title IV of such Act and subsequently re-
11 funded to the employer by the plan shall be
12 charged to the funding standard account in ac-
13 cordance with regulations prescribed by the
14 Secretary.

15 “(E) ELECTION FOR DEFERRAL OF
16 CHARGE FOR PORTION OF NET EXPERIENCE
17 LOSS.—If an election is in effect under section
18 412(b)(7)(F) (as in effect on the day before the
19 date of the enactment of the Defined Benefit
20 Security Act of 2005) for any plan year, the
21 funding standard account shall be charged in
22 the plan year to which the portion of the net ex-
23 perience loss deferred by such election was de-
24 ferred with the amount so deferred (and para-

1 graph (2)(B)(ii) shall not apply to the amount
2 so charged).

3 “(F) FINANCIAL ASSISTANCE.—Any
4 amount of any financial assistance from the
5 Pension Benefit Guaranty Corporation to any
6 plan, and any repayment of such amount, shall
7 be taken into account under this section and
8 section 412 in such manner as is determined by
9 the Secretary.

10 “(G) SHORT-TERM BENEFITS.—To the ex-
11 tent that any plan amendment increases the un-
12 funded past service liability under the plan by
13 reason of an increase in benefits which are pay-
14 able under the terms of the plan for a period
15 that does not exceed 14 years from the effective
16 date of the amendment, paragraph (2)(B)(i)
17 shall be applied separately with respect to such
18 increase in unfunded past service liability by
19 substituting the number of years of the period
20 during which such benefits are payable for ‘15’.

21 “(c) ADDITIONAL RULES.—

22 “(1) DETERMINATIONS TO BE MADE UNDER
23 FUNDING METHOD.—For purposes of this part, nor-
24 mal costs, accrued liability, past service liabilities,
25 and experience gains and losses shall be determined

1 under the funding method used to determine costs
2 under the plan.

3 “(2) VALUATION OF ASSETS.—

4 “(A) IN GENERAL.—For purposes of this
5 part, the value of the plan’s assets shall be de-
6 termined on the basis of any reasonable actu-
7 arial method of valuation which takes into ac-
8 count fair market value and which is permitted
9 under regulations prescribed by the Secretary.

10 “(B) ELECTION WITH RESPECT TO
11 BONDS.—The value of a bond or other evidence
12 of indebtedness which is not in default as to
13 principal or interest may, at the election of the
14 plan administrator, be determined on an amor-
15 tized basis running from initial cost at purchase
16 to par value at maturity or earliest call date.
17 Any election under this subparagraph shall be
18 made at such time and in such manner as the
19 Secretary shall by regulations provide, shall
20 apply to all such evidences of indebtedness, and
21 may be revoked only with the consent of the
22 Secretary.

23 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
24 SONABLE.—For purposes of this section, all costs, li-
25 abilities, rates of interest, and other factors under

1 the plan shall be determined on the basis of actu-
2 arial assumptions and methods—

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

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

9 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
10 PERIENCE GAIN OR LOSS.—For purposes of this sec-
11 tion, if—

12 “(A) a change in benefits under the Social
13 Security Act or in other retirement benefits cre-
14 ated under Federal or State law, or

15 “(B) a change in the definition of the term
16 ‘wages’ under section 3121, or a change in the
17 amount of such wages taken into account under
18 regulations prescribed for purposes of section
19 401(a)(5),

20 results in an increase or decrease in accrued liability
21 under a plan, such increase or decrease shall be
22 treated as an experience loss or gain.

23 “(5) FULL FUNDING.—If, as of the close of a
24 plan year, a plan would (without regard to this para-

1 graph) have an accumulated funding deficiency in
2 excess of the full funding limitation—

3 “(A) the funding standard account shall be
4 credited with the amount of such excess, and

5 “(B) all amounts described in subpara-
6 graphs (B), (C), and (D) of subsection (b) (2)
7 and subparagraph (B) of subsection (b)(3)
8 which are required to be amortized shall be con-
9 sidered fully amortized for purposes of such
10 subparagraphs.

11 “(6) FULL-FUNDING LIMITATION.—

12 “(A) IN GENERAL.—For purposes of para-
13 graph (5), the term ‘full-funding limitation’
14 means the excess (if any) of—

15 “(i) the accrued liability (including
16 normal cost) under the plan (determined
17 under the entry age normal funding meth-
18 od if such accrued liability cannot be di-
19 rectly calculated under the funding method
20 used for the plan), over

21 “(ii) the lesser of—

22 “(I) the fair market value of the
23 plan’s assets, or

24 “(II) the value of such assets de-
25 termined under paragraph (2).

1 “(B) MINIMUM AMOUNT.—

2 “(i) IN GENERAL.—In no event shall
3 the full-funding limitation determined
4 under subparagraph (A) be less than the
5 excess (if any) of—

6 “(I) 90 percent of the current li-
7 ability of the plan (including the ex-
8 pected increase in current liability due
9 to benefits accruing during the plan
10 year), over

11 “(II) the value of the plan’s as-
12 sets determined under paragraph (2).

13 “(ii) ASSETS.—For purposes of clause
14 (i), assets shall not be reduced by any
15 credit balance in the funding standard ac-
16 count.

17 “(C) FULL FUNDING LIMITATION.—For
18 purposes of this paragraph, unless otherwise
19 provided by the plan, the accrued liability under
20 a multiemployer plan shall not include benefits
21 which are not nonforfeitable under the plan
22 after the termination of the plan (taking into
23 consideration section 411(d)(3)).

24 “(D) CURRENT LIABILITY.—For purposes
25 of this paragraph—

1 “(i) IN GENERAL.—The term ‘current
2 liability’ means all liabilities to employees
3 and their beneficiaries under the plan.

4 “(ii) TREATMENT OF UNPREDICTABLE
5 CONTINGENT EVENT BENEFITS.—For pur-
6 poses of clause (i), any benefit contingent
7 on an event other than—

8 “(I) age, service, compensation,
9 death, or disability, or

10 “(II) an event which is reason-
11 ably and reliably predictable (as deter-
12 mined by the Secretary),

13 shall not be taken into account until the
14 event on which the benefit is contingent oc-
15 curs.

16 “(iii) INTEREST RATE USED.—The
17 rate of interest used to determine current
18 liability under this paragraph shall be the
19 rate of interest determined under subpara-
20 graph (E).

21 “(iv) MORTALITY TABLES.—

22 “(I) COMMISSIONERS’ STANDARD
23 TABLE.—In the case of plan years be-
24 ginning before the first plan year to
25 which the first tables prescribed under

1 subclause (II) apply, the mortality
2 table used in determining current li-
3 ability under this paragraph shall be
4 the table prescribed by the Secretary
5 which is based on the prevailing com-
6 missioners' standard table (described
7 in section 807(d)(5)(A)) used to de-
8 termine reserves for group annuity
9 contracts issued on January 1, 1993.

10 “(II) SECRETARIAL AUTHOR-
11 ITY.—The Secretary may by regula-
12 tion prescribe for plan years beginning
13 after December 31, 1999, mortality
14 tables to be used in determining cur-
15 rent liability under this subsection.
16 Such tables shall be based upon the
17 actual experience of pension plans and
18 projected trends in such experience.
19 In prescribing such tables, the Sec-
20 retary shall take into account results
21 of available independent studies of
22 mortality of individuals covered by
23 pension plans.

1 “(v) SEPARATE MORTALITY TABLES
2 FOR THE DISABLED.—Notwithstanding
3 clause (iv)—

4 “(I) IN GENERAL.—The Sec-
5 retary shall establish mortality tables
6 which may be used (in lieu of the ta-
7 bles under clause (iv)) to determine
8 current liability under this subsection
9 for individuals who are entitled to
10 benefits under the plan on account of
11 disability. The Secretary shall estab-
12 lish separate tables for individuals
13 whose disabilities occur in plan years
14 beginning before January 1, 1995,
15 and for individuals whose disabilities
16 occur in plan years beginning on or
17 after such date.

18 “(II) SPECIAL RULE FOR DIS-
19 ABILITIES OCCURRING AFTER 1994.—
20 In the case of disabilities occurring in
21 plan years beginning after December
22 31, 1994, the tables under subclause
23 (I) shall apply only with respect to in-
24 dividuals described in such subclause
25 who are disabled within the meaning

1 of title II of the Social Security Act
2 and the regulations thereunder.

3 “(vi) PERIODIC REVIEW.—The Sec-
4 retary shall periodically (at least every 5
5 years) review any tables in effect under
6 this subparagraph and shall, to the extent
7 such Secretary determines necessary, by
8 regulation update the tables to reflect the
9 actual experience of pension plans and pro-
10 jected trends in such experience.

11 “(E) REQUIRED CHANGE OF INTEREST
12 RATE.—For purposes of determining a plan’s
13 current liability for purposes of this
14 paragraph—

15 “(i) IN GENERAL.—If any rate of in-
16 terest used under the plan under sub-
17 section (b)(6) to determine cost is not
18 within the permissible range, the plan shall
19 establish a new rate of interest within the
20 permissible range.

21 “(ii) PERMISSIBLE RANGE.—For pur-
22 poses of this subparagraph—

23 “(I) IN GENERAL.—Except as
24 provided in subelause (II), the term
25 ‘permissible range’ means a rate of in-

1 interest which is not more than 5 per-
2 cent above, and not more than 10 per-
3 cent below, the weighted average of
4 the rates of interest on 30-year Treas-
5 ury securities during the 4-year period
6 ending on the last day before the be-
7 ginning of the plan year.

8 “(II) SECRETARIAL AUTHOR-
9 ITY.—If the Secretary finds that the
10 lowest rate of interest permissible
11 under subclause (I) is unreasonably
12 high, the Secretary may prescribe a
13 lower rate of interest, except that
14 such rate may not be less than 80
15 percent of the average rate deter-
16 mined under such subclause.

17 “(iii) ASSUMPTIONS.—Notwith-
18 standing paragraph (3)(A), the interest
19 rate used under the plan shall be—

20 “(I) determined without taking
21 into account the experience of the
22 plan and reasonable expectations, but

23 “(II) consistent with the assump-
24 tions which reflect the purchase rates
25 which would be used by insurance

1 companies to satisfy the liabilities
2 under the plan.

3 “(7) ANNUAL VALUATION.—

4 “(A) IN GENERAL.—For purposes of this
5 section, a determination of experience gains and
6 losses and a valuation of the plan’s liability
7 shall be made not less frequently than once
8 every year, except that such determination shall
9 be made more frequently to the extent required
10 in particular cases under regulations prescribed
11 by the Secretary.

12 “(B) VALUATION DATE.—

13 “(i) CURRENT YEAR.—Except as pro-
14 vided in clause (ii), the valuation referred
15 to in subparagraph (A) shall be made as of
16 a date within the plan year to which the
17 valuation refers or within one month prior
18 to the beginning of such year.

19 “(ii) USE OF PRIOR YEAR VALU-
20 ATION.—The valuation referred to in sub-
21 paragraph (A) may be made as of a date
22 within the plan year prior to the year to
23 which the valuation refers if, as of such
24 date, the value of the assets of the plan are
25 not less than 100 percent of the plan’s cur-

1 rent liability (as defined in paragraph
2 (6)(D) without regard to clause (iv) there-
3 of).

4 “(iii) ADJUSTMENTS.—Information
5 under clause (ii) shall, in accordance with
6 regulations, be actuarially adjusted to re-
7 flect significant differences in participants.

8 “(iv) LIMITATION.—A change in fund-
9 ing method to use a prior year valuation,
10 as provided in clause (ii), may not be made
11 unless as of the valuation date within the
12 prior plan year, the value of the assets of
13 the plan are not less than 125 percent of
14 the plan’s current liability (as defined in
15 paragraph (6)(D) without regard to clause
16 (iv) thereof).

17 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
18 DEEMED MADE.—For purposes of this section, any
19 contributions for a plan year made by an employer
20 after the last day of such plan year, but not later
21 than two and one-half months after such day, shall
22 be deemed to have been made on such last day. For
23 purposes of this subparagraph, such two and one-
24 half month period may be extended for not more

1 than six months under regulations prescribed by the
2 Secretary.

3 “(9) INTEREST RULE FOR WAIVERS AND EX-
4 TENSIONS.—The interest rate applicable for any
5 plan year for purposes of computing the amortiza-
6 tion charge described in subsection (b)(2)(C) and in
7 connection with an extension granted under sub-
8 section (d) shall be the rate of interest used under
9 the plan for determining costs.

10 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
11 MULTIEMPLOYER PLANS.—

12 “(1) AUTOMATIC EXTENSION UPON APPLICA-
13 TION BY CERTAIN PLANS.—

14 “(A) IN GENERAL.—If the plan sponsor of
15 a multiemployer plan—

16 “(i) submits to the Secretary an applica-
17 tion for an extension of the period of
18 years required to amortize any unfunded
19 liability described in any clause of sub-
20 section (b)(2)(B) or described in subsection
21 (b)(4), and

22 “(ii) includes with the application a
23 certification by the plan’s actuary de-
24 scribed in subparagraph (B),

1 the Secretary shall extend the amortization pe-
2 riod for the period of time (not in excess of 5
3 years) specified in the application. Such exten-
4 sion shall be in addition to any extension under
5 paragraph (2).

6 “(B) CRITERIA.—A certification with re-
7 spect to a multiemployer plan is described in
8 this subparagraph if the plan’s actuary certifies
9 that, based on reasonable assumptions—

10 “(i) absent the extension under sub-
11 paragraph (A), the plan would have an ac-
12 cumulated funding deficiency in the cur-
13 rent plan year or any of the 9 succeeding
14 plan years,

15 “(ii) the plan sponsor has adopted a
16 plan to improve the plan’s funding status,

17 “(iii) the plan is projected to have suf-
18 ficient assets to timely pay expected bene-
19 fits and anticipated expenditures over the
20 amortization period as extended, and

21 “(iv) the notice required under para-
22 graph (3)(A) has been provided.

23 “(2) ADDITIONAL EXTENSION.—

24 “(A) IN GENERAL.—If the plan sponsor of
25 a multiemployer plan submits to the Secretary

1 an application for an extension of the period of
2 years required to amortize any unfunded liabil-
3 ity described in any clause of subsection
4 (b)(2)(B) or described in subsection (b)(4), the
5 Secretary may extend the amortization period
6 for a period of time (not in excess of 5 years)
7 if the Secretary of the Treasury makes the de-
8 termination described in subparagraph (B).
9 Such extension shall be in addition to any ex-
10 tension under paragraph (1).

11 “(B) DETERMINATION.—The Secretary
12 make grant an extension under subparagraph
13 (A) if the Secretary determines that—

14 “(i) such extension would carry out
15 the purposes of this Act and would provide
16 adequate protection for participants under
17 the plan and their beneficiaries, and

18 “(ii) the failure to permit such exten-
19 sion would—

20 “(I) result in a substantial risk
21 to the voluntary continuation of the
22 plan, or a substantial curtailment of
23 pension benefit levels or employee
24 compensation, and

1 “(II) be adverse to the interests
2 of plan participants in the aggregate.

3 “(C) ACTION BY SECRETARY.—The Sec-
4 retary shall act upon any application for an ex-
5 tension under this paragraph within 180 days
6 of the submission of such application. If the
7 Secretary rejects the application for an exten-
8 sion under this paragraph, the Secretary shall
9 provide notice to the plan detailing the specific
10 reasons for the rejection, including references to
11 the criteria set forth above.

12 “(3) ADVANCE NOTICE.—

13 “(A) IN GENERAL.—The Secretary shall,
14 before granting an extension under this sub-
15 section, require each applicant to provide evi-
16 dence satisfactory to such Secretary that the
17 applicant has provided notice of the filing of the
18 application for such extension to each affected
19 party (as defined in section 4001(a)(21) of the
20 Employee Retirement Income Security Act of
21 1974) with respect to the affected plan. Such
22 notice shall include a description of the extent
23 to which the plan is funded for benefits which
24 are guaranteed under title IV of such Act and
25 for benefit liabilities.

1 “(B) CONSIDERATION OF RELEVANT IN-
2 FORMATION.—The Secretary shall consider any
3 relevant information provided by a person to
4 whom notice was given under paragraph (1).”.

5 (b) SHORTFALL FUNDING METHOD.—

6 (1) IN GENERAL.—A multiemployer plan meet-
7 ing the criteria of paragraph (2) may adopt, use, or
8 cease using, the shortfall funding method and such
9 adoption, use, or cessation of use of such method,
10 shall be deemed approved by the Secretary under
11 section 302(d)(1) of the Employee Retirement In-
12 come Security Act of 1974 and section 412(e)(1) of
13 the Internal Revenue Code of 1986.

14 (2) CRITERIA.—A multiemployer pension plan
15 meets the criteria of this clause if—

16 (A) the plan has not used the shortfall
17 funding method during the 5-year period ending
18 on the day before the date the plan is to use
19 the method under paragraph (1); and

20 (B) the plan is not operating under an am-
21 ortization period extension under section 304(d)
22 of such Act or section 431(d) of such Code.

23 (3) SHORTFALL FUNDING METHOD DEFINED.—

24 For purposes of this subsection, the term “shortfall
25 funding method” means the shortfall funding meth-

1 od described in Treasury Regulations section
2 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

3 (4) BENEFIT RESTRICTIONS TO APPLY.—The
4 benefit restrictions under section 302(c)(7) of such
5 Act and section 412(d)(7) of such Code shall apply
6 during any period a multiemployer plan is on the
7 shortfall funding method pursuant to this sub-
8 section.

9 (5) USE OF SHORTFALL METHOD NOT TO PRE-
10 CLUDE OTHER OPTIONS.—Nothing in this subsection
11 shall be construed to affect a multiemployer plan’s
12 ability to adopt the shortfall funding method with
13 the Secretary’s permission under otherwise applica-
14 ble regulations or to affect a multiemployer plan’s
15 right to change funding methods, with or without
16 the Secretary’s consent, as provided in applicable
17 rules and regulations.

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

20 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**
21 **PLOYER PLANS IN ENDANGERED OR CRIT-**
22 **ICAL STATUS.**

23 (a) IN GENERAL.—Subpart A of part III of sub-
24 chapter D of chapter 1 of the Internal Revenue Code of

1 1986 (as amended by this Act) is amended by inserting
2 after section 431 the following new section:

3 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**
4 **EMPLOYER PLANS IN ENDANGERED STATUS OR**
5 **CRITICAL STATUS.**

6 “(a) GENERAL RULE.—For purposes of this part, in
7 the case of a multiemployer plan—

8 “(1) if the plan is in endangered status—

9 “(A) the plan sponsor shall adopt and im-
10 plement a funding improvement plan in accord-
11 ance with the requirements of subsection (c),
12 and

13 “(B) the requirements of subsection (d)
14 shall apply during the funding plan adoption
15 period and the funding improvement period,
16 and

17 “(2) if the plan is in critical status—

18 “(A) the plan sponsor shall adopt and im-
19 plement a rehabilitation plan in accordance with
20 the requirements of subsection (e), and

21 “(B) the requirements of subsection (f)
22 shall apply during the rehabilitation plan adop-
23 tion period and the rehabilitation period.

24 “(b) DETERMINATION OF ENDANGERED AND CRIT-
25 ICAL STATUS.—For purposes of this section—

1 “(1) ENDANGERED STATUS.—A multiemployer
2 plan is in endangered status for a plan year if, as
3 determined by the plan actuary under paragraph
4 (3), the plan is not in critical status for the plan
5 year and either—

6 “(A) the plan’s funded percentage for such
7 plan year is less than 80 percent, or

8 “(B) the plan has an accumulated funding
9 deficiency for such plan year, or is projected to
10 have such an accumulated funding deficiency
11 for any of the 6 succeeding plan years, taking
12 into account any extension of amortization peri-
13 ods under section 431(d).

14 For purposes of this section, a plan described in
15 subparagraph (B) shall be treated as in seriously en-
16 dangered status.

17 “(2) CRITICAL STATUS.—A multiemployer plan
18 is in critical status for a plan year if, as determined
19 by the plan actuary under paragraph (3), the plan
20 is described in 1 or more of the following subpara-
21 graphs as of the beginning of the plan year:

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

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

1 “(ii) the sum of—

2 “(I) the market value of plan as-
3 sets, plus

4 “(II) the present value of the
5 reasonably anticipated employer con-
6 tributions for the current plan year
7 and each of the 5 succeeding plan
8 years, assuming that the terms of the
9 one or more collective bargaining
10 agreements pursuant to which the
11 plan is maintained for the current
12 plan year continue in effect for suc-
13 ceeding plan years,

14 is less than the present value of all benefits
15 projected to be payable under the plan dur-
16 ing the current plan year and each of the
17 5 succeeding plan years (plus administra-
18 tive expenses for such plan years).

19 “(B) A plan is described in this subpara-
20 graph if—

21 “(i) the plan has an accumulated
22 funding deficiency for the current plan
23 year, not taking into account any extension
24 of amortization periods under section
25 431(d), or

1 “(ii) the plan is projected to have an
2 accumulated funding deficiency for any of
3 the 3 succeeding plan years (4 succeeding
4 plan years if the funded percentage of the
5 plan is 65 percent or less), not taking into
6 account any extension of amortization peri-
7 ods under section 431(d).

8 “(C) A plan is described in this subpara-
9 graph if—

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

17 “(II) the present value of the reason-
18 ably anticipated employer contributions for
19 the current plan year,

20 “(ii) the present value of nonforfeit-
21 able benefits of inactive participants is
22 greater than the present value of non-
23 forfeitable benefits of active participants,
24 and

1 “(iii) the plan has an accumulated
2 funding deficiency for the current plan
3 year, or is projected to have such a defi-
4 ciency for any of the 4 succeeding plan
5 years, not taking into account any exten-
6 sion of amortization periods under section
7 431(d).

8 “(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 whether or not the
14 plan is in endangered status for such plan year
15 and whether or not the plan is in critical status
16 for such plan year.

17 “(B) ACTUARIAL PROJECTIONS OF ASSETS
18 AND LIABILITIES.—

19 “(i) IN GENERAL.—In making the de-
20 terminations and projections under this
21 subsection, the plan actuary shall make
22 projections required for the current and
23 succeeding plan years, using reasonable ac-
24 tuarial estimates, assumptions, and meth-
25 ods, of the current value of the assets of

1 the plan and the present value of all liabil-
2 ities to participants and beneficiaries under
3 the plan for the current plan year as of the
4 beginning of such year. The projected
5 present value of liabilities as of the begin-
6 ning of such year shall be determined
7 based on the actuarial statement required
8 under section 103(d) of the Employee Re-
9 tirement Income Security Act of 1974 with
10 respect to the most recently filed annual
11 report or the actuarial valuation for the
12 preceding plan year.

13 “(ii) DETERMINATIONS OF FUTURE
14 CONTRIBUTIONS.—Any actuarial projection
15 of plan assets shall assume—

16 “(I) reasonably anticipated em-
17 ployer contributions for the current
18 and succeeding plan years, assuming
19 that the terms of the one or more col-
20 lective bargaining agreements pursu-
21 ant to which the plan is maintained
22 for the current plan year continue in
23 effect for succeeding plan years, or

24 “(II) that employer contributions
25 for the most recent plan year will con-

1 tinue indefinitely, but only if the plan
2 actuary determines there have been no
3 significant demographic changes that
4 would make such assumption unrea-
5 sonable.

6 “(C) PENALTY FOR FAILURE TO SECURE
7 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
8 ure of the plan’s actuary to certify the plan’s
9 status under this subsection by the date speci-
10 fied in subparagraph (A) shall be treated for
11 purposes of section 502(c)(2) of such Act as a
12 failure or refusal by the plan administrator to
13 file the annual report required to be filed with
14 the Secretary under section 101(b)(4) of such
15 Act.

16 “(D) NOTICE.—In any case in which a
17 multiemployer plan is certified to be in endan-
18 gered or critical status under subparagraph (A),
19 the plan sponsor shall, not later than 30 days
20 after the date of the certification, provide notifi-
21 cation of the endangered or critical status to
22 the participants and beneficiaries, the bar-
23 gaining parties, the Pension Benefit Guaranty
24 Corporation, the Secretary, and the Secretary
25 of Labor.

1 “(c) FUNDING IMPROVEMENT PLAN MUST BE
2 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
3 STATUS.—

4 “(1) IN GENERAL.—In any case in which a
5 multiemployer plan is in endangered status for a
6 plan year, the plan sponsor, in accordance with this
7 subsection—

8 “(A) shall adopt a funding improvement
9 plan not later than 240 days following the re-
10 quired date for the actuarial certification of en-
11 dangered status under subsection (b)(3)(A),
12 and

13 “(B) within 30 days after the adoption of
14 the funding improvement plan—

15 “(i) in the case of a plan in seriously
16 endangered status, shall provide to the
17 bargaining parties 1 or more schedules
18 showing revised benefit structures, revised
19 contribution structures, or both, which, if
20 adopted, may reasonably be expected to en-
21 able the multiemployer plan to meet the
22 applicable requirements under paragraph
23 (3) in accordance with the funding im-
24 provement plan, including a description of
25 the reductions in future benefit accruals

1 and increases in contributions that the
2 plan sponsor determines are reasonably
3 necessary to meet the applicable require-
4 ments if the plan sponsor assumes that
5 there are no increases in contributions
6 under the plan other than the increases
7 necessary to meet the applicable require-
8 ments after future benefit accruals have
9 been reduced to the maximum extent per-
10 mitted by law, and

11 “(ii) may, if the plan sponsor deems
12 appropriate, prepare and provide the bar-
13 gaining parties with additional information
14 relating to contribution rates or benefit re-
15 ductions, alternative schedules, or other in-
16 formation relevant to achieving the re-
17 quirements under paragraph (3) in accord-
18 ance with the funding improvement plan.

19 “(2) EXCEPTION FOR YEARS AFTER PROCESS
20 BEGINS.—Paragraph (1) shall not apply to a plan
21 year if such year is in a funding plan adoption pe-
22 riod or funding improvement period by reason of the
23 plan being in endangered status for a preceding plan
24 year. For purposes of this section, such preceding
25 plan year shall be the initial determination year with

1 respect to the funding improvement plan to which it
2 relates.

3 “(3) FUNDING IMPROVEMENT PLAN.—For pur-
4 poses of this section—

5 “(A) IN GENERAL.—A funding improve-
6 ment plan is a plan which consists of the ac-
7 tions, including options or a range of options to
8 be proposed to the bargaining parties, which,
9 under reasonable actuarial assumptions, will re-
10 sult in the plan meeting the requirements of
11 this paragraph.

12 “(B) PLANS OTHER THAN SERIOUSLY EN-
13 DANGERED PLANS.—In the case of plan not in
14 seriously endangered status, the requirements
15 of this paragraph are met if the plan’s funded
16 percentage as of the close of the funding im-
17 provement period exceeds the sum of—

18 “(i) such percentage as of the begin-
19 ning of such period, plus

20 “(ii) 10 percent of the percentage de-
21 termined under clause (i).

22 “(C) SERIOUSLY ENDANGERED PLANS.—
23 In the case of a plan in seriously endangered
24 status, the requirements of this paragraph are
25 met if—

1 “(i) the plan’s funded percentage as
2 of the close of the funding improvement
3 period equals or exceeds the percentage
4 which is equal to the sum of—

5 “(I) such percentage as of the
6 beginning of such period, plus

7 “(II) 33 percent of the difference
8 between 100 percent and the percent-
9 age under subclause (I), and

10 “(ii) there is no accumulated funding
11 deficiency for any plan year during the
12 funding improvement period (taking into
13 account any extension of amortization peri-
14 ods under section 431(d)).

15 “(4) FUNDING IMPROVEMENT PERIOD.—For
16 purposes of this section—

17 “(A) IN GENERAL.—The funding improve-
18 ment period for any funding improvement plan
19 adopted pursuant to this subsection is the 10-
20 year period beginning on the first day of the
21 first plan year of the multiemployer plan begin-
22 ning after the earlier of—

23 “(i) the second anniversary of the
24 date of the adoption of the funding im-
25 provement plan, or

1 “(ii) the expiration of the collective
2 bargaining agreements in effect on the due
3 date for the actuarial certification of en-
4 dangered status for the initial determina-
5 tion year under subsection (b)(3)(A) and
6 covering, as of such due date, at least 75
7 percent of the active participants in such
8 multiemployer plan.

9 “(B) COORDINATION WITH CHANGES IN
10 STATUS.—

11 “(i) PLANS NO LONGER IN ENDAN-
12 GERED STATUS.—If the plan’s actuary cer-
13 tifies under subsection (b)(3)(A) for a plan
14 year in any funding plan adoption period
15 or funding improvement period that the
16 plan is no longer in endangered status and
17 is not in critical status, the funding plan
18 adoption period or funding improvement
19 period, whichever is applicable, shall end as
20 of the close of the preceding plan year.

21 “(ii) PLANS IN CRITICAL STATUS.—If
22 the plan’s actuary certifies under sub-
23 section (b)(3)(A) for a plan year in any
24 funding plan adoption period or funding
25 improvement period that the plan is in

1 critical status, the funding plan adoption
2 period or funding improvement period,
3 whichever is applicable, shall end as of the
4 close of the plan year preceding the first
5 plan year in the rehabilitation period with
6 respect to such status.

7 “(5) SPECIAL RULES FOR CERTAIN UNDER-
8 FUNDED PLANS.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), if the funded percentage of
11 a plan in seriously endangered status was 80
12 percent or less as of the beginning of the initial
13 determination year, the following rules shall
14 apply in determining whether the requirements
15 of paragraph (3)(C)(i) are met:

16 “(i) The plan’s funded percentage as
17 of the close of the funding improvement
18 period must equal or exceed a percentage
19 which is equal to the sum of—

20 “(I) such percentage as of the
21 beginning of such period, plus

22 “(II) 20 percent of the difference
23 between 100 percent and the percent-
24 age under subclause (I).

1 which the last of the collective bargaining
2 agreements described in paragraph
3 (4)(A)(ii) expires.

4 Notwithstanding clause (ii), if for any plan year
5 ending after the date described in clause (ii) the
6 plan actuary certifies (at the time of the annual
7 certification under subsection (b)(3)(A) for such
8 plan year) that, based on the terms of the plan
9 and collective bargaining agreements in effect
10 at the time of that annual certification, the plan
11 is not projected to be able to meet the require-
12 ments of paragraph (3)(C)(i) without regard to
13 this paragraph, the plan may continue to as-
14 sume for such year that the funding improve-
15 ment period is 15 years rather than 10 years.

16 “(6) UPDATES TO FUNDING IMPROVEMENT
17 PLAN AND SCHEDULES.—

18 “(A) FUNDING IMPROVEMENT PLAN.—The
19 funding improvement plan may be periodically
20 updated by the plan sponsor. A copy of any up-
21 dated funding improvement plan shall be filed
22 with the plan’s annual report under section 104
23 of the Employee Retirement Income Security
24 Act of 1974.

1 “(B) SCHEDULES.—The plan sponsor may
2 periodically update any schedule of contribution
3 rates provided under this subsection to reflect
4 the experience of the plan.

5 “(C) DURATION OF SCHEDULE.—A sched-
6 ule of contribution rates provided by the plan
7 sponsor and relied upon by bargaining parties
8 in negotiating a collective bargaining agreement
9 shall remain in effect for the duration of that
10 collective bargaining agreement.

11 “(7) PENALTY IF NO FUNDING IMPROVEMENT
12 PLAN ADOPTED.—A failure of the plan sponsor to
13 adopt a funding improvement plan by the date speci-
14 fied in paragraph (1)(A) shall be treated for pur-
15 poses of section 502(c)(2) of such Act as a failure
16 or refusal by the plan administrator to file the an-
17 nual report required to be filed with the Secretary
18 of Labor under section 101(b)(4) of such Act.

19 “(8) FUNDING PLAN ADOPTION PERIOD.—For
20 purposes of this section, the term ‘funding plan
21 adoption period’ means the period beginning on the
22 date of the certification under subsection (b)(3)(A)
23 for the initial determination year and ending on the
24 day before the first day of the funding improvement
25 period.

1 “(d) RULES FOR OPERATION OF PLAN DURING
2 ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO
3 MEET REQUIREMENTS.—

4 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-
5 RIOD.—During the plan adoption period—

6 “(A) the plan sponsor may not accept a
7 collective bargaining agreement or participation
8 agreement with respect to the multiemployer
9 plan that provides for—

10 “(i) a reduction in the level of con-
11 tributions for any participants,

12 “(ii) a suspension of contributions
13 with respect to any period of service, or

14 “(iii) any new direct or indirect exclu-
15 sion of younger or newly hired employees
16 from plan participation,

17 “(B) no amendment of the plan which in-
18 creases the liabilities of the plan by reason of
19 any increase in benefits, any change in the ac-
20 cernal of benefits, or any change in the rate at
21 which benefits become nonforfeitable under the
22 plan may be adopted unless the amendment is
23 required as a condition of qualification under
24 part I of subchapter D of chapter 1 or to com-
25 ply with other applicable law, and

1 “(C) in the case of a plan in seriously en-
2 dangered status, the plan sponsor shall take all
3 reasonable actions which are consistent with the
4 terms of the plan and applicable law and which
5 are expected, based on reasonable assumptions,
6 to achieve—

7 “(i) an increase in the plan’s funded
8 percentage, and

9 “(ii) postponement of an accumulated
10 funding deficiency for at least 1 additional
11 plan year.

12 Actions under subparagraph (C) include applications
13 for extensions of amortization periods under section
14 431(d), use of the shortfall funding method in mak-
15 ing funding standard account computations, amend-
16 ments to the plan’s benefit structure, reductions in
17 future benefit accruals, and other reasonable actions
18 consistent with the terms of the plan and applicable
19 law

20 “(2) COMPLIANCE WITH FUNDING IMPROVE-
21 MENT PLAN.—

22 “(A) IN GENERAL.—A plan may not be
23 amended after the date of the adoption of a
24 funding improvement plan under subsection (c)

1 so as to be inconsistent with the funding im-
2 provement plan.

3 “(B) NO REDUCTION IN CONTRIBU-
4 TIONS.—A plan sponsor may not during any
5 funding improvement period accept a collective
6 bargaining agreement or participation agree-
7 ment with respect to the multiemployer plan
8 that provides for—

9 “(i) a reduction in the level of con-
10 tributions for any participants,

11 “(ii) a suspension of contributions
12 with respect to any period of service, or

13 “(iii) any new direct or indirect exclu-
14 sion of younger or newly hired employees
15 from plan participation,

16 “(C) SPECIAL RULES FOR BENEFIT IN-
17 CREASES.—A plan may not be amended after
18 the date of the adoption of a funding improve-
19 ment plan under subsection (c) so as to in-
20 crease benefits, including future benefit accru-
21 als, unless—

22 “(i) in the case of a plan in seriously
23 endangered status, the plan actuary cer-
24 tifies that, after taking into account the
25 benefit increase, the plan is still reasonably

1 expected to meet the requirements under
2 subsection (c)(3) in accordance with the
3 schedule contemplated in the funding im-
4 provement plan, and

5 “(ii) in the case of a plan not in seri-
6 ously endangered status, the actuary cer-
7 tifies that such increase is paid for out of
8 contributions not required by the funding
9 improvement plan to meet the require-
10 ments under subsection (c)(3) in accord-
11 ance with the schedule contemplated in the
12 funding improvement plan.

13 “(3) FAILURE TO MEET REQUIREMENTS.—Not-
14 withstanding section 4971(g), if a plan fails to meet
15 the requirements of subsection (c)(3) by the end of
16 the funding improvement period, the plan shall be
17 treated as having an accumulated funding deficiency
18 for purposes of section 4971 for the last plan year
19 in such period (and each succeeding plan year until
20 such requirements are met) in an amount equal to
21 the greater of the amount of the contributions nec-
22 essary to meet such requirements or the amount of
23 such accumulated funding deficiency without regard
24 to this paragraph.

1 “(e) REHABILITATION PLAN MUST BE ADOPTED
2 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

3 “(1) IN GENERAL.—In any case in which a
4 multiemployer plan is in critical status for a plan
5 year, the plan sponsor, in accordance with this
6 subsection—

7 “(A) shall adopt a rehabilitation plan not
8 later than 240 days following the required date
9 for the actuarial certification of critical status
10 under subsection (b)(3)(A), and

11 “(B) within 30 days after the adoption of
12 the rehabilitation plan—

13 “(i) shall provide to the bargaining
14 parties 1 or more schedules showing re-
15 vised benefit structures, revised contribu-
16 tion structures, or both, which, if adopted,
17 may reasonably be expected to enable the
18 multiemployer plan to emerge from critical
19 status in accordance with the rehabilitation
20 plan, and

21 “(ii) may, if the plan sponsor deems
22 appropriate, prepare and provide the bar-
23 gaining parties with additional information
24 relating to contribution rates or benefit re-
25 ductions, alternative schedules, or other in-

1 formation relevant to emerging from crit-
2 ical status in accordance with the funding
3 improvement plan.

4 The schedule or schedules described in subparagraph
5 (B)(i) shall reflect reductions in future benefit ac-
6 cruals and increases in contributions that the plan
7 sponsor determines are reasonably necessary to
8 emerge from critical status. One schedule shall be
9 designated as the default schedule and such schedule
10 shall assume that there are no increases in contribu-
11 tions under the plan other than the increases nec-
12 essary to emerge from critical status after future
13 benefit accruals and other benefits (other than bene-
14 fits the reduction or elimination of which are not
15 permitted under section 411(d)(6)) have been re-
16 duced to the maximum extent permitted by law.

17 “(2) EXCEPTION FOR YEARS AFTER PROCESS
18 BEGINS.—Paragraph (1) shall not apply to a plan
19 year if such year is in a rehabilitation plan adoption
20 period or rehabilitation period by reason of the plan
21 being in critical status for a preceding plan year.
22 For purposes of this section, such preceding plan
23 year shall be the initial critical year with respect to
24 the rehabilitation plan to which it relates.

1 “(3) REHABILITATION PLAN.—For purposes of
2 this section—

3 “(A) IN GENERAL.—A rehabilitation plan
4 is a plan which consists of—

5 “(i) actions which are certain to en-
6 able, under reasonable actuarial assump-
7 tions, the plan to cease to be in critical
8 status by the end of the rehabilitation pe-
9 riod and may include reductions in plan
10 expenditures (including plan mergers and
11 consolidations), reductions in future ben-
12 efit accruals or increases in contributions,
13 if agreed to by the bargaining parties, or
14 any combination of such actions, or

15 “(ii) if the plan sponsor determines
16 that, based on reasonable actuarial as-
17 sumptions and upon exhaustion of all rea-
18 sonable measures, the plan can not reason-
19 ably be expected to emerge from critical
20 status by the end of the rehabilitation pe-
21 riod, reasonable measures to emerge from
22 critical status at a later time or to forestall
23 possible insolvency (within the meaning of
24 section 4245 of the Employee Retirement
25 Income Security Act of 1974).

1 Such plan shall include the schedules required
2 to be provided under paragraph (1)(B)(i). If
3 clause (ii) applies, such plan shall set forth the
4 alternatives considered, explain why the plan is
5 not reasonably expected to emerge from critical
6 status by the end of the rehabilitation period,
7 and specify when, if ever, the plan is expected
8 to emerge from critical status in accordance
9 with the rehabilitation plan.

10 “(B) UPDATES TO REHABILITATION PLAN
11 AND SCHEDULES.—

12 “(i) REHABILITATION PLAN.—The
13 plan sponsor shall annually update the re-
14 habilitation plan and shall file the update
15 with the plan’s annual report under section
16 104 of the Employee Retirement Income
17 Security Act of 1974.

18 “(ii) SCHEDULES.—The plan sponsor
19 may periodically update any schedule of
20 contribution rates provided under this sub-
21 section to reflect the experience of the
22 plan, except that the schedule or schedules
23 described in paragraph (1)(B)(i) shall be
24 updated at least once every 3 years.

1 “(iii) DURATION OF SCHEDULE.—A
2 schedule of contribution rates provided by
3 the plan sponsor and relied upon by bar-
4 gaining parties in negotiating a collective
5 bargaining agreement shall remain in ef-
6 fect for the duration of that collective bar-
7 gaining agreement.

8 “(C) DEFAULT SCHEDULE.—If the collec-
9 tive bargaining agreement providing for con-
10 tributions under a multiemployer plan that was
11 in effect at the time the plan entered critical
12 status expires and, after receiving a schedule
13 from the plan sponsor under paragraph
14 (1)(B)(i), the bargaining parties have not
15 adopted a collective bargaining agreement with
16 terms consistent with such a schedule, the de-
17 fault schedule described in the last sentence of
18 paragraph (1) shall go into effect with respect
19 to those bargaining parties.

20 “(4) REHABILITATION PERIOD.—For purposes
21 of this section—

22 “(A) IN GENERAL.—The rehabilitation pe-
23 riod for a plan in critical status is the 10-year
24 period beginning on the first day of the first

1 plan year of the multiemployer plan following
2 the earlier of—

3 “(i) the second anniversary of the
4 date of the adoption of the rehabilitation
5 plan, or

6 “(ii) the expiration of the collective
7 bargaining agreements in effect on the
8 date of the due date for the actuarial cer-
9 tification of critical status for the initial
10 critical year under subsection (a)(1) and
11 covering, as of such date at least 75 per-
12 cent of the active participants in such mul-
13 tiemployer plan.

14 If a plan emerges from critical status as pro-
15 vided under subparagraph (B) before the end of
16 such 10-year period, the rehabilitation period
17 shall end with the plan year preceding the plan
18 year for which the determination under sub-
19 paragraph (B) is made.

20 “(B) EMERGENCE.—A plan in critical sta-
21 tus shall remain in such status until a plan
22 year for which the plan actuary certifies, in ac-
23 cordance with subsection (b)(3)(A), that the
24 plan is not projected to have an accumulated
25 funding deficiency for the plan year or any of

1 the 9 succeeding plan years, without regard to
2 use of the shortfall method or any extension of
3 amortization periods under section 431(d).

4 “(5) PENALTY IF NO REHABILITATION PLAN
5 ADOPTED.—A failure of a plan sponsor to adopt a
6 rehabilitation plan by the date specified in para-
7 graph (1)(A) shall be treated for purposes of section
8 502(c)(2) of the Employee Retirement Income Secu-
9 rity Act of 1974 as a failure or refusal by the plan
10 administrator to file the annual report required to
11 be filed with the Secretary of Labor under section
12 101(b)(4) of such Act.

13 “(6) REHABILITATION PLAN ADOPTION PE-
14 RIOD.—For purposes of this section, the term ‘reha-
15 bilitation plan adoption period’ means the period be-
16 ginning on the date of the certification under sub-
17 section (b)(3)(A) for the initial critical year and end-
18 ing on the day before the first day of the rehabilita-
19 tion period.

20 “(f) RULES FOR OPERATION OF PLAN DURING
21 ADOPTION AND REHABILITATION PERIOD.—

22 “(1) COMPLIANCE WITH REHABILITATION
23 PLAN.—

24 “(A) IN GENERAL.—A plan may not be
25 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 411(d)(6), 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 411(b)(1)(A)),

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 by regulations.

8 “ (B) EXCEPTION.—Subparagraph (A)
9 shall not apply to a benefit which under section
10 411(a)(11) may be immediately distributed
11 without the consent of the participant.

12 “ (3) ADJUSTMENTS DISREGARDED IN WITH-
13 DRAWAL LIABILITY DETERMINATION.—Any benefit
14 reductions under this subsection shall be disregarded
15 in determining a plan’s unfunded vested benefits for
16 purposes of determining an employer’s withdrawal li-
17 ability under section 4201 of the Employee Retirement
18 Income Security Act of 1974.

19 “ (4) SPECIAL RULES FOR PLAN ADOPTION PE-
20 RIOD.—During the rehabilitation plan adoption
21 period—

22 “ (A) the plan sponsor may not accept a
23 collective bargaining agreement or participation
24 agreement with respect to the multiemployer
25 plan that provides for—

1 “(i) a reduction in the level of con-
2 tributions for any participants,

3 “(ii) a suspension of contributions
4 with respect to any period of service, or

5 “(iii) any new direct or indirect exclu-
6 sion of younger or newly hired employees
7 from plan participation, and

8 “(B) no amendment of the plan which in-
9 creases the liabilities of the plan by reason of
10 any increase in benefits, any change in the ac-
11 crual of benefits, or any change in the rate at
12 which benefits become nonforfeitable under the
13 plan may be adopted unless the amendment is
14 required as a condition of qualification under
15 part I of subchapter D of chapter 1 or to com-
16 ply with other applicable law.

17 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
18 DECISIONS.—If, within 60 days of the due date for adop-
19 tion of a funding improvement plan under subsection (c)
20 or a rehabilitation plan under subsection (e), the plan
21 sponsor of a plan in endangered status or a plan in critical
22 status has not agreed on a funding improvement plan or
23 rehabilitation plan, then any member of the board or
24 group that constitutes the plan sponsor may require that
25 the plan sponsor enter into an expedited dispute resolution

1 procedure for the development and adoption of a funding
2 improvement plan or rehabilitation plan.

3 “(h) NONBARGAINED PARTICIPATION.—

4 “(1) BOTH BARGAINED AND NONBARGAINED
5 EMPLOYEE-PARTICIPANTS.—In the case of an em-
6 ployer that contributes to a multiemployer plan with
7 respect to both employees who are covered by one or
8 more collective bargaining agreements and to em-
9 ployees who are not so covered, if the plan is in en-
10 dangered status or in critical status, benefits of and
11 contributions for the nonbargained employees, in-
12 cluding surcharges on those contributions, shall be
13 determined as if those nonbargained employees were
14 covered under the first to expire of the employer’s
15 collective bargaining agreements in effect when the
16 plan entered endangered or critical status.

17 “(2) NONBARGAINED EMPLOYEES ONLY.—In
18 the case of an employer that contributes to a multi-
19 employer plan only with respect to employees who
20 are not covered by a collective bargaining agreement,
21 this section shall be applied as if the employer were
22 the bargaining parties, and its participation agree-
23 ment with the plan was a collective bargaining
24 agreement with a term ending on the first day of the
25 plan year beginning after the employer is provided

1 the schedule or schedules described in subsections
2 (c) and (e).

3 “(3) EMPLOYEES COVERED BY A COLLECTIVE
4 BARGAINING AGREEMENT.—The determination as to
5 whether an employee covered by a collective bar-
6 gaining agreement for purposes of this section shall
7 be made without regard to the special rule in Treas-
8 ury Regulation section 1.410(b)–6(d)(ii)(D).

9 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
10 poses of this section—

11 “(1) BARGAINING PARTY.—The term ‘bar-
12 gaining party’ means, in connection with a multiem-
13 ployer plan—

14 “(A) an employer that has an obligation to
15 contribute under the plan, and

16 “(B) an employee organization which, for
17 purposes of collective bargaining, represents
18 plan participants employed by such an em-
19 ployer.

20 “(2) FUNDED PERCENTAGE.—The term ‘fund-
21 ed percentage’ means the percentage equal to a
22 fraction—

23 “(A) the numerator of which is the value
24 of the plan’s assets, as determined under sec-
25 tion 431(c)(2), and

1 “(B) the denominator of which is the ac-
2 crued liability of the plan, determined using ac-
3 tuarial assumptions described in section
4 431(c)(3).

5 “(3) ACCUMULATED FUNDING DEFICIENCY.—
6 The term ‘accumulated funding deficiency’ has the
7 meaning given such term in section 412(a).

8 “(4) ACTIVE PARTICIPANT.—The term ‘active
9 participant’ means, in connection with a multiem-
10 ployer plan, a participant who is in covered service
11 under the plan.

12 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
13 tive participant’ means, in connection with a multi-
14 employer plan, a participant, or the beneficiary or
15 alternate payee of a participant, who—

16 “(A) is not in covered service under the
17 plan, and

18 “(B) is in pay status under the plan or has
19 a nonforfeitable right to benefits under the
20 plan.

21 “(6) PAY STATUS.—A person is in pay status
22 under a multiemployer plan if—

23 “(A) at any time during the current plan
24 year, such person is a participant or beneficiary
25 under the plan and is paid an early, late, nor-

1 mal, or disability retirement benefit under the
2 plan (or a death benefit under the plan related
3 to a retirement benefit), or

4 “(B) to the extent provided in regulations
5 of the Secretary, such person is entitled to such
6 a benefit under the plan.

7 “(7) OBLIGATION TO CONTRIBUTE.—The term
8 ‘obligation to contribute’ has the meaning given such
9 term under section 4212(a) of the Employee Retirement
10 Income Security Act of 1974.

11 “(8) ACTUARIAL METHOD.—Notwithstanding
12 any other provision of this section, the actuary’s de-
13 terminations with respect to a plan’s normal cost,
14 actuarial accrued liability, and improvements in a
15 plan’s funded percentage under this section shall be
16 based upon the unit credit funding method (whether
17 or not that method is used for the plan’s actuarial
18 valuation).”

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply with respect to plan years begin-
21 ning after 2006.

1 **Subtitle B—Deduction and Related**
2 **Provisions**

3 **SEC. 221. DEDUCTION LIMITS FOR MULTIEMPLOYER**
4 **PLANS.**

5 (a) INCREASE IN DEDUCTION.—Section
6 404(a)(1)(D) of the Internal Revenue Code of 1986, as
7 amended by this Act, is amended to read as follows:

8 “(D) AMOUNT DETERMINED ON BASIS OF
9 UNFUNDED CURRENT LIABILITY.—

10 “(i) IN GENERAL.—In the case of a
11 defined benefit plan which is a multiem-
12 ployer plan, except as provided in regula-
13 tions, the maximum amount deductible
14 under the limitations of this paragraph
15 shall not be less than the unfunded current
16 liability of the plan.

17 “(ii) UNFUNDED CURRENT LIABIL-
18 ITY.—For purposes of clause (i), the term
19 ‘unfunded current liability’ means the ex-
20 cess (if any) of—

21 “(I) 130 percent of the current
22 liability of the plan determined under
23 section 431(c)(6)(C), over

1 “(II) the value of the plan’s as-
2 sets determined under section
3 431(c)(2).”.

4 (b) EXCEPTION FROM LIMITATION ON DEDUCTION
5 WHERE COMBINATION OF DEFINED CONTRIBUTION AND
6 DEFINED BENEFIT PLANS.—

7 (1) IN GENERAL.—Section 404(a)(7)(C) of such
8 Code, as amended by this Act, is amended by adding
9 at the end the following new clause:

10 “(v) MULTIEMPLOYER PLANS.—In ap-
11 plying this paragraph, any multiemployer
12 plan shall not be taken into account.”.

13 (2) CONFORMING AMENDMENT.—Section
14 404(a)(7)(A) of such Code is amended by striking
15 the last sentence.

16 (c) EFFECTIVE DATES.—

17 (1) DEDUCTION LIMIT.—The amendment made
18 by subsection (a) shall apply to years beginning after
19 December 31, 2006.

20 (2) EXCEPTION.—The amendments made by
21 subsection (b) shall apply to years beginning after
22 December 31, 2005.

1 **SEC. 222. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**
2 **TIEMPLOYER HEALTH PLAN.**

3 (a) IN GENERAL.—Section 420(e) of the Internal
4 Revenue Code of 1986 (relating to definitions and special
5 rules) is amended by adding at the end the following new
6 paragraph:

7 “(5) APPLICATION TO MULTIEMPLOYER
8 PLAN.—In the case of any plan to which section
9 404(c) applies (or any successor plan primarily cov-
10 ering employees in the building and construction in-
11 dustry)—

12 “(A) the prohibition under subsection (a)
13 on the application of this section to a multiem-
14 ployer plan shall not apply, and

15 “(B) this section shall be applied to any
16 such plan—

17 “(i) by treating any reference in this
18 section to an employer as a reference to all
19 employers maintaining the plan (or, if ap-
20 propriate, the plan sponsor), and

21 “(ii) in accordance with such modi-
22 fications of this section (and the provisions
23 of this title and the Employee Retirement
24 Income Security Act of 1974 relating to
25 this section) as the Secretary determines

1 appropriate to reflect the fact the plan is
2 not maintained by a single employer.”

3 (b) AMENDMENTS OF ERISA.—

4 (1) Section 101(e)(3) of the Employee Retirement
5 Income Security Act of 1974 (29 U.S.C.
6 1021(e)(3)) is amended by striking “American Jobs
7 Creation Act of 2004” and inserting “Defined Ben-
8 efit Security Act of 2005”.

9 (2) Section 403(c)(1) of such Act (29 U.S.C.
10 1103(c)(1)) is amended by striking “American Jobs
11 Creation Act of 2004” and inserting “Defined Ben-
12 efit Security Act of 2005”.

13 (3) Section 408(b)(13) of such Act (29 U.S.C.
14 1108(b)(13)) is amended by striking “American
15 Jobs Creation Act of 2004” and inserting “Defined
16 Benefit Security Act of 2005”.

17 (c) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to transfers made in taxable years
19 beginning after December 31, 2004.

1 “(ii) the yield curve method for years
2 beginning after 2010.

3 “(D) YIELD CURVE METHOD.—For pur-
4 poses of this paragraph—

5 “(i) IN GENERAL.—The yield curve
6 method is a method under which present
7 value is determined—

8 “(I) by using interest rates
9 drawn from a yield curve which is pre-
10 scribed by the Secretary of the Treas-
11 ury and which reflects the yield on
12 high-quality corporate bonds with
13 varying maturities, and

14 “(II) by matching the timing of
15 the expected benefit payments under
16 the plan to the interest rates on such
17 yield curve.

18 “(ii) PUBLICATION.—Each month the
19 Secretary of the Treasury shall publish any
20 yield curve prescribed under this subpara-
21 graph which shall apply to plan years be-
22 ginning in such month and such yield
23 curve shall be based on average interest
24 rates for business days occurring during
25 the 3 preceding months.

1 “(E) PHASE-IN YIELD CURVE METHOD.—

2 “(i) IN GENERAL.—Present value de-
3 termined under the phase-in yield curve
4 method shall be equal to the sum of—

5 “(I) the applicable percentage of
6 such amount determined under the
7 yield curve method described in sub-
8 paragraph (D), and

9 “(II) the product of such amount
10 determined by using the applicable in-
11 terest rate and a percentage equal to
12 100 percent minus the applicable per-
13 centage.

14 “(ii) APPLICABLE PERCENTAGE.—For
15 purposes of clause (i), the applicable per-
16 centage is 20 percent for plan years begin-
17 ning in 2007, 40 percent for plan years be-
18 ginning in 2008, 60 percent for plan years
19 beginning in 2009, and 60 percent for plan
20 years beginning in 2010.”.

21 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

22 (1) IN GENERAL.—Section 417(e)(3)(A) of the
23 Internal Revenue Code of 1986 (relating to deter-
24 mination of present value) is amended by adding at
25 the end the following new sentence: “In the case of

1 plan years beginning after 2006, the preceding sen-
2 tence shall be applied by using the applicable yield
3 curve method under subparagraph (C) rather than
4 the applicable interest rate.”

5 (2) APPLICABLE YIELD CURVE METHOD.—Sec-
6 tion 417(e) of such Code is amended by adding at
7 the end the following new subparagraphs:

8 “(C) APPLICABLE YIELD CURVE METH-
9 OD.—For purposes of subparagraph (A), the
10 term ‘applicable yield curve method’ means—

11 “(i) the phase-in yield curve method
12 in the case of plan years beginning in
13 2007, 2008, 2009, and 2010, and

14 “(ii) the yield curve method for years
15 beginning after 2010.

16 “(D) YIELD CURVE METHOD.—For pur-
17 poses of this paragraph—

18 “(i) IN GENERAL.—The yield curve
19 method is a method under which present
20 value is determined—

21 “(I) by using interest rates
22 drawn from a yield curve which is pre-
23 scribed by the Secretary and which re-
24 flects the yield on high-quality cor-

1 porate bonds with varying maturities,
2 and

3 “(II) by matching the timing of
4 the expected benefit payments under
5 the plan to the interest rates on such
6 yield curve.

7 “(ii) PUBLICATION.—Each month the
8 Secretary shall publish any yield curve pre-
9 scribed under this subparagraph which
10 shall apply to plan years beginning in such
11 month and such yield curve shall be based
12 on average interest rates for business days
13 occurring during the 3 preceding months.

14 “(E) PHASE-IN YIELD CURVE METHOD.—

15 “(i) IN GENERAL.—Present value de-
16 termined under the phase-in yield curve
17 method shall be equal to the sum of—

18 “(I) the applicable percentage of
19 such amount determined under the
20 yield curve method described in sub-
21 paragraph (D), and

22 “(II) the product of such amount
23 determined by using the applicable in-
24 terest rate and a percentage equal to

1 100 percent minus the applicable per-
2 centage.

3 “(ii) APPLICABLE PERCENTAGE.—For
4 purposes of clause (i), the applicable per-
5 centage is 20 percent for plan years begin-
6 ning in 2007, 40 percent for plan years be-
7 ginning in 2008, 60 percent for plan years
8 beginning in 2009, and 60 percent for plan
9 years beginning in 2010.”.

10 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
11 plan shall not fail to meet the requirements of section
12 204(g) of the Employee Retirement Income Security Act
13 of 1974 or section 411(d)(6) of the Internal Revenue Code
14 of 1986 solely by reason of the adoption by the plan of
15 an amendment necessary to meet the requirements of the
16 amendments made by this section.

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

20 **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**
21 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**
22 **TRIBUTIONS.**

23 (a) IN GENERAL.—Clause (ii) of section
24 415(b)(2)(E) of the Internal Revenue Code of 1986 is
25 amended to read as follows:

1 “(ii) For purposes of adjusting any
2 benefit under subparagraph (B) for any
3 form of benefit subject to section
4 417(e)(3), the interest rate assumption
5 shall not be less than the greatest of—

6 “(I) 5.5 percent,

7 “(II) the rate that provides a
8 benefit of not more than 105 percent
9 of the benefit that would be provided
10 if the applicable yield curve method
11 under section 417(e)(3)(C) were used
12 to determine the interest rate assump-
13 tion, or

14 “(III) the rate specified under
15 the plan.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply to distributions made in years
18 beginning after 2006.

19 **SEC. 303. RESTRICTIONS ON FUNDING OF NONQUALIFIED**
20 **DEFERRED COMPENSATION PLANS BY EM-**
21 **PLOYERS MAINTAINING UNDERFUNDED OR**
22 **TERMINATED SINGLE-EMPLOYER PLANS.**

23 (a) AMENDMENTS OF ERISA.—

24 (1) IN GENERAL.—Part 3 of subtitle A of title
25 I of the Employee Retirement Income Security Act

1 of 1974 (29 U.S.C. 1081 et seq.), as amended by
2 this Act, is amended by adding at the end the fol-
3 lowing new section:

4 “NOTICE OF FUNDING OF NONQUALIFIED DEFERRED
5 COMPENSATION PLANS

6 “SEC. 306. (a) NOTICE AND ACCESS.—

7 “(1) NOTICE RELATING TO RESTRICTED PE-
8 RIOD.—The plan administrator of a defined benefit
9 plan which is a single-employer plan shall notify
10 each plan sponsor of the plan within a reasonable
11 period of time after the occurrence of an event which
12 results in a restricted period with respect to the
13 plan. Such notice shall include information—

14 “(A) as to the duration of the restricted
15 period, and

16 “(B) the restrictions under section
17 409A(b)(3) of the Internal Revenue Code of
18 1986 which apply during the restricted period
19 to the plan sponsor and any member of a con-
20 trolled group which includes such sponsor.

21 “(2) NOTICE OF EXISTENCE OF, AND TRANS-
22 FERS TO, NONQUALIFIED DEFERRED COMPENSATION
23 PLANS.—

24 “(A) INITIAL NOTICE.—Within 30 days of
25 receipt of a notice under paragraph (1), each

1 plan sponsor shall notify the plan administrator
2 of the plan described in paragraph (1)—

3 “(i) of nonqualified deferred com-
4 pensation plans maintained by the plan
5 sponsor or any member of a controlled
6 group which includes such sponsor, and

7 “(ii) the amount of any assets trans-
8 ferred or otherwise reserved by the plan
9 sponsor or such member in violation of sec-
10 tion 409A(b)(3) of such Code during any
11 portion of the restricted period occurring
12 on or before the date the plan sponsor pro-
13 vides such notice.

14 “(B) ADDITIONAL NOTICES.—If, after the
15 date on which notice is provided under subpara-
16 graph (A) and during any portion of the re-
17 maining restricted period specified in the notice
18 provided under paragraph (1), the plan sponsor
19 of a plan described in paragraph (1) or a mem-
20 ber of a controlled group which includes such
21 sponsor—

22 “(i) transfers or reserves assets in vio-
23 lation of section 409A(b)(3) of such Code,
24 or

1 “(ii) establishes a new nonqualified
2 deferred compensation plan,
3 the plan sponsor shall notify the plan adminis-
4 trator of the plan described in paragraph (1) of
5 such transfer, reservation, or establishment
6 within 3 days of the date of such action.

7 “(3) ACCESS TO FINANCIAL DATA.—Any fidu-
8 ciary of the plan shall have access to the financial
9 records of a plan sponsor or any member of a con-
10 trolled group which includes such sponsor to deter-
11 mine if assets were transferred or otherwise reserved
12 in violation of section 409A(b)(3) of such Code.

13 “(4) FORM AND MANNER.—The Secretary may
14 prescribe the form and manner of a notice required
15 under this section. Such a notice shall be written in
16 a manner calculated to be understood by the average
17 plan participant and may be delivered in written,
18 electronic, or other appropriate form to the extent
19 that such form is reasonably accessible to the recipi-
20 ent.

21 “(b) RESTRICTED PERIOD.—For purposes of this
22 section, the term ‘restricted period’ means, with respect
23 to any plan described in subsection (a)(1)—

24 “(1) any period—

1 “(B) any bona fide vacation leave, sick
2 leave, compensatory time, disability pay, or
3 death benefit plan.

4 “(2) QUALIFIED EMPLOYER PLAN.—The term
5 ‘qualified employer plan’ means—

6 “(A) any plan, contract, pension, account,
7 or trust described in subparagraph (A) or (B)
8 of section 219(g)(5) of the Internal Revenue
9 Code of 1986 (without regard to subparagraph
10 (A)(iii)),

11 “(B) any eligible deferred compensation
12 plan (within the meaning of section 457(b)) of
13 such Code, and

14 “(C) any plan described in section 415(m)
15 of such Code.

16 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
17 The term ‘plan’ includes any agreement or arrange-
18 ment, including an agreement or arrangement that
19 includes one person.

20 “(d) OTHER DEFINITIONS.—For purposes of this
21 section—

22 “(1) APPLICABLE COVERED EMPLOYEE.—

23 “(A) IN GENERAL.—The term ‘applicable
24 covered employee’ mean any—

1 “(i) covered employee of a plan spon-
2 sor,

3 “(ii) covered employee of a member of
4 a controlled group which includes the plan
5 sponsor, and

6 “(iii) former employee who was a cov-
7 ered employee at the time of termination of
8 employment with the plan sponsor or a
9 member of a controlled group which in-
10 cludes the plan sponsor.

11 “(B) COVERED EMPLOYEE.—The term
12 ‘covered employee’ has the meaning given such
13 term by section 162(m)(3) of the Internal Rev-
14 enue Code of 1986.

15 “(2) CONTROLLED GROUP.—The term ‘con-
16 trolled group’ has the meaning given such term by
17 section 302(d)(3).”.

18 (2) ENFORCEMENT.—

19 (A) IN GENERAL.—Section 502(a) of the
20 Employee Retirement Income Security Act (29
21 U.S.C. 1132(a)), as amended by this Act, is
22 amended—

23 (i) by striking “or” at the end of
24 paragraph (9), by striking the period at
25 the end of paragraph (10) and inserting “;

1 or”, and by adding at the end the following
2 new paragraph:

3 “(11) by the Secretary or a fiduciary of a de-
4 fined benefit plan which is a single-employer plan
5 against—

6 “(A) a plan sponsor, a member of a con-
7 trolled group which includes the plan sponsor,
8 an applicable covered employee, or a person
9 holding assets which are part of a nonqualified
10 deferred compensation plan to recover on behalf
11 of the plan—

12 “(i) assets which were set aside or
13 transferred in violation of section
14 409A(b)(3) of the Internal Revenue Code
15 of 1986 (and any earnings properly allo-
16 cable to the assets); or

17 “(ii) amounts equivalent to the assets
18 and earnings described in clause (i); or

19 “(B) a plan sponsor, or a member of a
20 controlled group which includes the plan spon-
21 sor, to compel the production of records the fi-
22 duciary is entitled to under section 306.”; and

23 (ii) by adding at the end the following
24 new flush sentence:

1 “For purposes of paragraph (11), any term used in such
2 paragraph which is also used in section 306 shall have
3 the meaning given such term by section 306.”.

4 (B) AWARDING OF FEES.—Section 502(g)
5 of such Act (29 U.S.C. 1132(g)) is amended by
6 adding at the end the following new paragraph:

7 “(3) ACTIONS TO RECOVER ASSETS TRANS-
8 FERRED TO NONQUALIFIED DEFERRED COMPENSA-
9 TION PLANS.—If, in any action under subsection
10 (a)(11) by a fiduciary for or on behalf of a plan to
11 enforce section 306 of this Act and section
12 409A(b)(3), a judgment is awarded in favor of the
13 plan, the court may, in addition to any other
14 amount, award the plan reasonable attorney’s fees
15 and costs of the action, to be paid by the defend-
16 ant”.

17 (3) CLERICAL AMENDMENT.—The table of con-
18 tents in section 1 of such Act, as amended by this
19 Act, is amended by adding at the end the following
20 new item:

“Sec. 306. Restrictions on funding of nonqualified deferred compensation
plans.”.

21 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

22 (1) IN GENERAL.—Subsection (b) of section
23 409A of the Internal Revenue Code of 1986 (pro-
24 viding rules relating to funding) is amended by re-

1 designating paragraphs (3) and (4) as paragraphs
2 (4) and (5), respectively, and by inserting after
3 paragraph (2) the following new paragraph:

4 “(3) EMPLOYERS OF UNDERFUNDED OR TERMI-
5 NATED DEFINED BENEFIT PLANS.—During any re-
6 stricted period—

7 “(A) a plan sponsor of a defined benefit
8 plan which is a single-employer plan, or

9 “(B) any member of a controlled group
10 which includes such sponsor,

11 shall not directly or indirectly transfer assets, or di-
12 rectly or indirectly otherwise reserve assets, in a
13 trust (or other arrangement determined by the Sec-
14 retary) for purposes of paying deferred compensa-
15 tion of an applicable covered employee under a non-
16 qualified deferred compensation plan of the plan
17 sponsor or member. Any assets transferred or re-
18 served in violation of the preceding sentence shall,
19 for purposes of section 83, be treated as property
20 transferred in connection with the performance of
21 services whether or not such assets are available to
22 satisfy claims of general creditors. For purposes of
23 this paragraph, any term used in this paragraph
24 which is also used in section 306 of the Employee

1 Retirement Income Security Act of 1974 shall have
2 the meaning given such term by such section.”.

3 (2) CONFORMING AMENDMENTS.—Paragraphs
4 (4) and (5) of section 409A(b) of such Code, as re-
5 designated by subsection (a) of this subsection, are
6 each amended by striking “paragraph (1) or (2)”
7 each place it appears and inserting “paragraph (1),
8 (2), or (3)”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to transfers or other reservation
11 of assets after December 31, 2006.

12 **SEC. 304. MODIFICATION OF PENSION FUNDING REQUIRE-**
13 **MENTS FOR PLANS SUBJECT TO CURRENT**
14 **TRANSITION RULE.**

15 (a) PLAN YEAR BEFORE NEW FUNDING RULES.—
16 Section 769(c)(3) of the Retirement Protection Act of
17 1994, as added by section 201 of the Pension Funding
18 Equity Act of 2004, is amended by striking “and 2005”
19 and inserting “, 2005, and 2006”.

20 (b) PLAN YEARS AFTER NEW FUNDING RULES.—

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

22 (A) was not required to pay a variable rate
23 premium for the plan year beginning in 1996,

24 (B) has not, in any plan year beginning
25 after 1995, merged with another plan (other

1 than a plan sponsored by an employer that was
2 in 1996 within the controlled group of the plan
3 sponsor), and

4 (C) is sponsored by a company that is en-
5 gaged primarily in the interurban or interstate
6 passenger bus service,

7 the rules described in subsection (b) shall apply for
8 any plan year beginning after 2006.

9 (2) MODIFIED RULES.—The rules described in
10 this subsection are as follows:

11 (A) For purposes of—

12 (i) determining unfunded target liabil-
13 ity under section 4006(a)(3)(E)(ii) of the
14 Employee Retirement Income Security Act
15 of 1974, and

16 (ii) determining any present value or
17 making any computation under section 412
18 of the Internal Revenue Code of 1986 or
19 section 302 of such Act,

20 the mortality table shall be the mortality table used
21 by the plan.

22 (B) Notwithstanding section 303(e)(3) of
23 such Act or 430(e)(3) of such Code, for pur-
24 poses of section 303(e)(2)(B) of such Act and
25 430(c)(2)(B) of such Code, the value of plan

1 assets shall not be reduced by the amount of
2 the prefunding balance if, pursuant to a binding
3 written agreement with the Pension Benefit
4 Guaranty Corporation entered into before Janu-
5 ary 1, 2006, the prefunding balance is not
6 available to reduce the minimum required con-
7 tribution for the plan year.

8 (3) DEFINITIONS.—Any term used in this sec-
9 tion which is also used in section 303 of such Act
10 or section 430 of such Code shall have the meaning
11 provided such term in such section.

12 (4) CONFORMING AMENDMENT.—Section 769
13 of the Retirement Protection Act of 1994 is amend-
14 ed by striking subsection (c).

15 (5) EFFECTIVE DATE.—The amendments made
16 by this subsection shall apply to plan years begin-
17 ning after 2006.

18 **Subtitle B—Other provisions**

19 **SEC. 311. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 20 **ROAD RETIREMENT ANNUITIES INDE-** 21 **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 22 **PLOYEE.**

23 (a) IN GENERAL.—Section 2 of the Railroad Retire-
24 ment Act of 1974 (45 U.S.C. 231a) is amended—

1 (1) in subsection (c)(4)(i), by striking “(A) is
2 entitled to an annuity under subsection (a)(1) and
3 (B)”;

4 (2) in subsection (e)(5), by striking “or di-
5 vorced wife” the second place it appears.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect 1 year after the date of the
8 enactment of this Act.

9 **SEC. 312. EXTENSION OF TIER II RAILROAD RETIREMENT**
10 **BENEFITS TO SURVIVING FORMER SPOUSES**
11 **PURSUANT TO DIVORCE AGREEMENTS.**

12 (a) IN GENERAL.—Section 5 of the Railroad Retire-
13 ment Act of 1974 (45 U.S.C. 231d) is amended by adding
14 at the end the following:

15 “(d) Notwithstanding any other provision of law, the
16 payment of any portion of an annuity computed under sec-
17 tion 3(b) to a surviving former spouse in accordance with
18 a court decree of divorce, annulment, or legal separation
19 or the terms of any court-approved property settlement
20 incident to any such court decree shall not be terminated
21 upon the death of the individual who performed the service
22 with respect to which such annuity is so computed unless
23 such termination is otherwise required by the terms of
24 such court decree.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall take effect 1 year after the date of the
3 enactment of this Act.

4 **SEC. 313. 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 **TITLE IV—IMPROVEMENTS IN**
4 **PBGC GUARANTEE PROVISIONS**

5 **SEC. 401. INCREASES IN PBGC PREMIUMS.**

6 (a) **FLAT-RATE PREMIUMS.—**

7 Section 4006(a)(3)(A)(i) of the Employee Re-
8 tirement Income Security Act of 1974 (29 U.S.C.
9 1306(a)(3)(A)(i)) is amended to read as follows:

10 “(i) in the case of a single-employer plan, an
11 amount equal to—

12 “(I) for plan years beginning after Decem-
13 ber 31, 1990, and before January 1, 2006, \$19,
14 or

15 “(II) for plan years beginning after De-
16 cember 31, 2005, \$30,

17 plus the additional premium (if any) determined
18 under subparagraph (E) for each individual who is
19 a participant in such plan during the plan year;”;
20 and

21 (b) **RISK-BASED PREMIUMS.—**

22 (1) **CONFORMING AMENDMENTS RELATED TO**
23 **FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—**

24 Section 4006(a)(3)(E) of such Act (as amended by

1 paragraph (1)) is amended by striking clauses (iii)
2 and (iv) and inserting the following:

3 “(iii)(I) For purposes of clause (ii), except as pro-
4 vided in subclause (II), the term ‘unfunded benefits’
5 means, for a plan year, the amount which would be the
6 plan’s funding shortfall (as defined in section 303(c)(4)),
7 if the value of plan assets of the plan were equal to the
8 fair market value of such assets and only vested benefits
9 were taken into account.

10 “(II) The interest rate used in valuing vested benefits
11 for purposes of subclause (I) shall be equal to the first,
12 second, or third segment rate which would be determined
13 under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were
14 applied by substituting ‘the yields’ for ‘the 3-year weighted
15 average of yields’, as applicable under rules similar to the
16 rules under section 303(h)(2)(B).”.

17 (2) EFFECTIVE DATE.—The amendments made
18 by paragraph (1) shall apply with respect to plan
19 years beginning after 2005.

20 (c) FLAT-RATE PREMIUM ADJUSTMENT.—

21 (1) IN GENERAL.—Beginning in 2011, and
22 every 5 years thereafter, the Board of Directors of
23 the Pension Benefit Guaranty Corporation under
24 title IV of the Employee Retirement Income Security
25 Act (29 U.S.C. 1301 et seq.) shall submit to Con-

1 gress a report that describes any recommendations
2 for adjusting the premium rate payable to the Cor-
3 poration described under section 4006(a)(3)(A)(i) of
4 such Act (as amended by subsection (a)).

5 (2) CONSIDERATIONS.—In developing the re-
6 port described under paragraph (1), the Corporation
7 shall consider—

8 (A) the national average wage index (as
9 defined in section 209(k)(1) of the Social Secu-
10 rity Act (42 U.S.C. 409(k)(1)));

11 (B) the finances of the Corporation as of
12 the date of such report and an actuarial evalua-
13 tion of the expected operations and status of
14 the funds established under section 4005 of
15 such title IV (29 U.S.C. 1305) for the 5 years
16 succeeding such date;

17 (C) the impact of any increases in such
18 premium rate on plan sponsors subject to such
19 title IV; and

20 (D) such other factors determined relevant
21 by the Corporation.

22 **SEC. 402. PBGC AUTHORITY TO ENTER ALTERNATIVE**
23 **FUNDING AGREEMENTS TO PREVENT PLAN**
24 **TERMINATIONS.**

25 (a) AUTHORITY TO ENTER INTO AGREEMENTS.—

1 (1) DISTRESS TERMINATIONS.—Section 4041(c)
2 of the Employee Retirement Income Security Act of
3 1974 (29 U.S.C. 1341(c)) is amended by adding at
4 the end the following:

5 “(4) ALTERNATIVE FUNDING AGREEMENTS.—

6 “(A) IN GENERAL.—If the corporation de-
7 termines that—

8 “(i) a plan meets the requirements for
9 a distress termination under this sub-
10 section without regard to an alternative
11 funding agreement under section 4047(a),
12 and

13 “(ii) the termination of the plan
14 would not be necessary if such an agree-
15 ment were entered into,

16 the corporation may enter into such an agree-
17 ment with the contributing sponsors under the
18 plan.

19 “(B) EARLY ACTION INITIATIVES.—Sub-
20 ject to the limitations in subsection (a)(3), if
21 the corporation, upon its own initiative, or upon
22 the request of the contributing sponsor or other
23 person, determines that it is reasonable to be-
24 lieve that a plan may be subject to a distress
25 termination within 2 years unless action is

1 taken, the corporation may enter into an alter-
2 native funding agreement under section
3 4047(a).”.

4 (2) INVOLUNTARY TERMINATIONS.—Section
5 4042 of the Employee Retirement Income Security
6 Act of 1974 (29 U.S.C. 1342) is amended by adding
7 at the end the following:

8 “(i) ALTERNATIVE FUNDING AGREEMENTS.—If the
9 corporation determines that—

10 “(1) a plan meets the requirements for an in-
11 voluntary termination under this section without re-
12 gard to an alternative funding agreement under sec-
13 tion 4047(a), and

14 “(2) the termination of the plan would not be
15 necessary if such an agreement were entered into,
16 the corporation may enter into such an agreement with
17 the contributing sponsors under the plan.”.

18 (b) ALTERNATIVE FUNDING SCHEDULES TO PRE-
19 VENT PLAN TERMINATION.—

20 (1) IN GENERAL.—Section 4047 of the Em-
21 ployee Retirement Income Security Act of 1974 (29
22 U.S.C. 1347) is amended by—

23 (A) striking the section heading and all
24 that follows though “Whenever” and
25 inserting—

1 **“SEC. 4047. ALTERNATIVE FUNDING SCHEDULES TO PRE-**
2 **VENT TERMINATION; RESTORATION OF TER-**
3 **MINATED PLANS.**

4 “(a) ALTERNATIVE FUNDING AGREEMENTS.—

5 “(1) IN GENERAL.—If the requirements of sec-
6 tion 4041(c)(4) or 4042(i) are met with respect to
7 any plan, the corporation may enter into an alter-
8 native funding agreement with the contributing
9 sponsors under the plan that meets the requirements
10 of this subsection.

11 “(2) OTHER REQUIREMENTS.—An alternative
12 funding agreement may be entered into by the cor-
13 poration only if—

14 “(A) the corporation finds the agreement
15 to be in the best interests of the participants
16 and beneficiaries; and

17 “(B) the agreement meets the require-
18 ments set forth by the corporation in regula-
19 tions.

20 “(3) ALTERNATIVE FUNDING AGREEMENT.—

21 “(A) IN GENERAL.—An agreement meets
22 the requirements of this subsection if the
23 agreement—

24 “(i) provides for an additional amorti-
25 zation schedule for a period not to exceed
26 10 years;

1 “(ii) requires the plan to pay at the
2 time the agreement is entered into any
3 professional fees or other expenses in-
4 curred by the corporation in connection
5 with the agreements,

6 “(iii) requires approval by the cor-
7 poration before the contributing sponsor
8 establishes or maintains any other defined
9 benefit plan other than any multiemployer
10 plan that covers a substantial number of
11 employees who are covered by the plan
12 subject to the agreement or who perform
13 substantially the same type of work with
14 respect to the same business operations as
15 employees covered by such plan, and

16 “(iv) provides for a termination date,
17 or a schedule of termination dates, for the
18 purpose of the guarantee under section
19 4022, to apply if a plan terminates during
20 the period that the agreement is in effect.

21 “(B) OTHER CONDITIONS.—Notwith-
22 standing any other provision of this Act, an
23 agreement meeting the requirements of this
24 subsection may provide—

1 “(i) for restrictions on, or the elimi-
2 nation of, future accruals, but only to the
3 extent that such restrictions or elimi-
4 nations would have been permitted under
5 section 204(g) or section 411(d)(6) of the
6 Internal Revenue Code of 1986 if they had
7 been implemented by a plan amendment
8 adopted immediately before the effective
9 date of the agreement,

10 “(ii) that the contributing sponsors
11 will provide security or other collateral in
12 such form and amount as specified in the
13 agreement,

14 “(iii) conditions under which the plan
15 could be terminated in a standard termi-
16 nation under section 4041(b) or conditions
17 under which accruals to which clause (i)
18 applies could resume in the future, and

19 “(iv) for such other terms and condi-
20 tions as the corporation determines nec-
21 essary to protect the interests of the cor-
22 poration.

23 “(C) EMPLOYEE REQUIREMENTS.—

1 “(i) IN GENERAL.—An agreement
2 meets the requirements of this subsection
3 only if—

4 “(I) at least 60 days before the
5 agreement is to take effect the con-
6 tributing sponsors notify affected par-
7 ties (other than the corporation) of
8 the terms of the agreement and its ef-
9 fect on such parties, and

10 “(II) each employee organization
11 representing participants in the plan
12 approves the agreement before it
13 takes effect.

14 “(ii) FORM AND MANNER OF NO-
15 TICE.—The notice under clause (i) shall be
16 written in a manner calculated to be un-
17 derstood by the average plan participant
18 and may be provided to a person des-
19 ignated, in writing, by the person to which
20 it would otherwise be provided. Such notice
21 may be provided in written, electronic, or
22 other appropriate form to the extent such
23 form is reasonably accessible to persons to
24 whom the notice is required to be provided.

1 “(4) COORDINATION WITH MINIMUM FUNDING
2 REQUIREMENTS.—Any alternative funding schedule
3 under an agreement meeting the requirements under
4 this subsection shall supersede the minimum funding
5 requirements of this Act and the Internal Revenue
6 Code of 1986. For purposes of applying this Act or
7 such Code, any contribution required under such
8 schedule shall be treated in the same manner as con-
9 tributions required under section 302 of this Act
10 and section 412 of such Code.

11 “(b) RESTORATION OF TERMINATED PLANS.—
12 Whenever”.

13 (2) CONFORMING AMENDMENT.—The table of
14 contents for title IV of such Act is amended by
15 striking the item relating to section 4047 and insert-
16 ing the following:

“4047. Alternative funding schedules to prevent terminations; restoration of
terminated plans.”.

17 (c) AMENDMENTS TO OTHER PROVISIONS.—

18 (1) QUALIFICATION REQUIREMENT.—Section
19 401(a) of the Internal Revenue Code of 1986 is
20 amended by inserting after paragraph (34) the fol-
21 lowing new paragraph:

22 “(35) SUCCESSOR PLANS TO CERTAIN PLANS.—
23 If—

1 “(A) an alternative funding agreement de-
2 scribed in section 4047(a) of the Employee Re-
3 tirement Income Security Act of 1974 is in ef-
4 fect with respect to any plan, and

5 “(B) the plan is maintained by an em-
6 ployer that establishes or maintains 1 or more
7 other defined benefit plans (other than any
8 multiemployer plan), and such other plans in
9 combination provide benefit accruals to any
10 substantial number of successor employees,
11 the Secretary may, in the Secretary’s discretion, de-
12 termine that any trust of which any other such plan
13 is a part does not constitute a qualified trust under
14 this subsection unless all benefit obligations of the
15 plan to which the alternative funding agreement ap-
16 plies have been satisfied. For purposes of this para-
17 graph, the term ‘successor employee’ means any em-
18 ployee who is or was covered by the plan to which
19 the alternative funding agreement applies and any
20 employee who performs substantially the same type
21 of work with respect to the same business operations
22 as an employee covered by such plan.”.

23 (2) LIMITATION ON DEDUCTIONS UNDER CER-
24 TAIN PLANS.—Section 404(a)(7)(C) of the Internal

1 Revenue Code of 1986 is amended by adding at the
2 end the following:

3 “(iii) PLANS SUBJECT TO ALTER-
4 NATIVE FUNDING AGREEMENTS.—This
5 paragraph shall not apply to any plan for
6 a plan year if an alternative funding agree-
7 ment described in section 4047(a) of the
8 Employee Retirement Income Security Act
9 of 1974 is in effect for such year.”.

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on the date of enactment of
12 this Act.

13 **SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAIN-**
14 **TAINED BY COMMERCIAL AIRLINES THAT**
15 **ARE AMENDED TO CEASE FUTURE BENEFIT**
16 **ACCRUALS.**

17 (a) IN GENERAL.—If an eligible plan elects to have
18 this section apply—

19 (1) in the case of any applicable plan year be-
20 ginning before January 1, 2007, the plan shall not
21 have an accumulated funding deficiency for purposes
22 of section 302 of the Employee Retirement Income
23 Security Act of 1974 and sections 412 and 4971 of
24 the Internal Revenue Code of 1986 if contributions
25 to the plan for the plan year are not less than the

1 minimum required contribution determined under
2 subsection (d) for the plan for the plan year, and

3 (2) in the case of any applicable plan year be-
4 ginning on or after January 1, 2007, the minimum
5 required contribution determined under sections 303
6 of such Act and 430 of such Code shall, for purposes
7 of sections 302 and 303 of such Act and sections
8 412, 430, and 4971 of such Code, be equal to the
9 minimum required contribution determined under
10 subsection (d) for the plan for the plan year.

11 (b) ELIGIBLE PLAN.—For purposes of this section—

12 (1) IN GENERAL.—The term “eligible plan”
13 means a defined benefit plan (other than a multiem-
14 ployer plan) to which sections 302 of such Act and
15 412 of such Code applies—

16 (A) which is sponsored by an employer
17 which is a commercial passenger airline, and

18 (B) with respect to which the requirements
19 of paragraphs (2) and (3) are met.

20 (2) ACCRUAL RESTRICTIONS.—

21 (A) IN GENERAL.—The requirements of
22 this paragraph are met if, effective as of the
23 first day of the first applicable plan year and at
24 all times thereafter, the plan provides that, ex-
25 cept to the extent required under section 401(a)

1 of such Code or as provided in subparagraph
2 (B) or (C), a participant will not receive any
3 credit for any purpose under the plan for serv-
4 ice with, or for compensation earned from, the
5 employer (or any member of the employer's
6 controlled group (within the meaning of section
7 302(d)(3) of such Act and section 412(d)(3) of
8 such Code)) on or after such first day.

9 (B) EXCEPTION FOR EXISTING COLLEC-
10 TIVE BARGAINING AGREEMENTS.—Subpara-
11 graph (A) shall not apply to any credit for serv-
12 ice or compensation if such service or
13 compensation—

14 (i) is covered by 1 or more collective
15 bargaining agreements between 1 or more
16 employers (or members of the employer's
17 controlled group) and employee representa-
18 tives and in effect on the date of the enact-
19 ment of this section; and

20 (ii) is provided or paid on or before
21 the earlier of—

22 (I) the date on which the last col-
23 lective bargaining agreement relating
24 to the plan terminates (determined
25 without regard to any extension there-

1 of after the date of enactment of this
2 Act), or

3 (II) December 31, 2009.

4 For purposes of clause (ii)(I), any plan amend-
5 ment made pursuant to a collective bargaining
6 agreement relating to the plan which amends
7 the plan solely to conform to any requirement
8 added by this section shall not be treated as a
9 termination of such collective bargaining agree-
10 ment.

11 (C) CURRENT FUNDING OF OTHERWISE
12 PROHIBITED CREDITS.—

13 (i) IN GENERAL.—Notwithstanding
14 subparagraph (A), during any plan year
15 beginning prior to January 1, 2010, a plan
16 may provide credit for any applicable plan
17 year which is otherwise prohibited under
18 such subparagraph, but the minimum re-
19 quired contribution for the plan year shall
20 be increased by the entire amount of the
21 expected increase in unfunded accrued li-
22 ability (determined under the unit credit
23 funding method) due to benefits accruing
24 during the plan year which are attributable
25 to such credit.

1 (ii) LIMITATION.—This subparagraph
2 shall apply only to a plan that—

3 (I) is maintained by an applicable
4 employer (as defined in section 302
5 (l)(12)(C)(i)) that is domiciled in At-
6 lanta, Georgia; and—

7 (II) was amended effective De-
8 cember 31, 2004, to cease crediting
9 service for purposes of benefit accrual
10 or was amended before September 1,
11 2005, to change benefit formulas and
12 to provide a 7-year transition with re-
13 spect to such change ending June 30,
14 2010.

15 (3) RESTRICTION ON AMENDMENTS INCREAS-
16 ING LIABILITIES.—The requirements of this para-
17 graph are met if, at any time during the period be-
18 ginning on the date of the enactment of this section
19 and ending on the day before the first day of the
20 first applicable plan year, no amendment to the plan
21 has been adopted which increases the liabilities of
22 the plan by reason of any increase in benefits, any
23 change in the accrual of benefits, or any change in
24 the rate at which benefits become nonforfeitable
25 under the plan. This paragraph shall not apply to

1 any plan amendment required by a collective bar-
2 gaining agreement described in paragraph (2)(B).

3 (c) ELECTIONS AND RELATED TERMS.—

4 (1) IN GENERAL.—A plan sponsor shall make
5 the election under subsection (a) at such time and
6 in such manner as the Secretary may prescribe.
7 Such election, once made, may be revoked only with
8 the consent of the Secretary.

9 (2) YEARS FOR WHICH ELECTION MADE.—

10 (A) IN GENERAL.—The plan sponsor may
11 select the first plan year to which the election
12 under subsection (a) applies from among plan
13 years ending after the date of the election. The
14 election shall apply to such plan year and all
15 subsequent years.

16 (B) ELECTION OF NEW PLAN YEAR.—The
17 plan sponsor may specify a new plan year in the
18 election under subsection (a) and the plan year
19 of the plan may be changed to such new plan
20 year without the approval of the Secretary of
21 the Treasury.

22 (3) APPLICABLE PLAN YEAR.—The term “ap-
23 plicable plan year” means each plan year to which
24 the election under subsection (a) applies under para-
25 graph (1).

1 (d) MINIMUM REQUIRED CONTRIBUTION.—

2 (1) IN GENERAL.—In the case of any applicable
3 plan year during the amortization period, the min-
4 imum required contribution shall be the amount nec-
5 essary to amortize the unfunded liability of the plan,
6 determined as of the first day of the plan year, in
7 equal annual installments (until fully amortized)
8 over the remainder of the amortization period. Such
9 amount shall be separately determined for each ap-
10 plicable plan year.

11 (2) YEARS AFTER AMORTIZATION PERIOD.—In
12 the case of any plan year beginning after the amorti-
13 zation period, section 302(a)(2)(A) of such Act and
14 section 412(a)(2)(A) of such Code shall apply to
15 such plan, but the prefunding balance as of the first
16 day of such year under section 303(f) of such Act
17 and section 430(f) of such Code shall be zero.

18 (3) DEFINITIONS.—For purposes of this
19 section—

20 (A) UNFUNDED LIABILITY.—The term
21 “unfunded liability” means the unfunded ac-
22 crued liability under the plan, determined under
23 the unit credit funding method.

24 (B) AMORTIZATION PERIOD.—The term
25 “amortization period” means the 14-plan year

1 period beginning with the first applicable plan
2 year.

3 (4) OTHER RULES.—In determining the min-
4 imum required contribution and amortization
5 amount under this subsection—

6 (A) the provisions of section 302(c)(3) of
7 such Act and section 412(c)(3) of such Code, as
8 in effect before the date of enactment of this
9 section, shall apply,

10 (B) the rate of interest under section
11 302(b) of such Act and section 412(b) of such
12 Code, as so in effect, shall be used for all cal-
13 culations requiring an interest rate, and

14 (C) the value of plan assets shall be equal
15 to their fair market value.

16 (e) FUNDING STANDARD ACCOUNT AND
17 PREFUNDING BALANCE.—Any charge or credit in the
18 funding standard account under section 302 of such Act
19 or section 412 of such Code, and any prefunding balance
20 under section 303 of such Act or section 430 of such Code,
21 as of the day before the first day of the first applicable
22 plan year, shall be reduced to zero.

23 (f) AMENDMENTS TO OTHER PROVISIONS.—

24 (1) QUALIFICATION REQUIREMENT.—Section
25 401(a)(35) of the Internal Revenue Code of 1986, as

1 added by this Act, is amended by adding at the end
2 the following: “This paragraph shall also apply to
3 any plan during any period during which an amorti-
4 zation schedule under section 403 of the Defined
5 Benefit Security Act of 2005 is in effect.”

6 (2) 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 Defined Benefit Security Act of 2005 is in effect
13 for such year.”

14 (3) 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 “(g) FIRST DAY OF SHORTFALL PERIOD SUB-
2 STITUTED FOR TERMINATION DATE.—If, as of the termi-
3 nation date (without regard to this subsection) a plan is
4 in a severe funding shortfall period under section 206(g)
5 by reason of the plan sponsor being in bankruptcy, then
6 this section shall be applied by treating the first day of
7 the severe funding shortfall period as the termination date
8 of the plan.”.

9 (b) ALLOCATION OF ASSETS AMONG PRIORITY
10 GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044
11 of the Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1344) is amended by adding at the end the
13 following:

14 “(e) BANKRUPTCY FILING SUBSTITUTED FOR TER-
15 MINATION DATE.—If, as of the termination date (without
16 regard to this subsection) a plan is in a severe funding
17 shortfall period under section 206(g) by reason of the plan
18 sponsor being in bankruptcy, then subsection (a)(3) of this
19 section shall be applied by treating the first day of the
20 severe funding shortfall as the termination date of the
21 plan. ”.

22 (c) EFFECTIVE DATE.—The amendments made this
23 section shall apply with respect to proceedings initiated
24 under title 11, United States Code, or under any similar
25 Federal law or law of a State or political subdivision on

1 or after the date that is 30 days after the date of enact-
2 ment of this Act.

3 **SEC. 406. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**
4 **LOYERS.**

5 (a) IN GENERAL.—Subparagraph (A) of section
6 4006(a)(3) of the Employee Retirement Income Security
7 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

8 (1) in clause (i), by inserting “other than a new
9 single-employer plan (as defined in subparagraph
10 (F)) maintained by a small employer (as so de-
11 fined),” after “single-employer plan,”

12 (2) in clause (iii), by striking the period at the
13 end and inserting “, and”, and

14 (3) by adding at the end the following new
15 clause:

16 “(v) in the case of a new single-employer plan
17 (as defined in subparagraph (F)) maintained by a
18 small employer (as so defined) for the plan year, \$5
19 for each individual who is a participant in such plan
20 during the plan year.”

21 (b) DEFINITION OF NEW SINGLE-EMPLOYER
22 PLAN.—Section 4006(a)(3) of the Employee Retirement
23 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is
24 amended by adding at the end the following new subpara-
25 graph:

1 “(F)(i) For purposes of this paragraph, a single-em-
2 ployer plan maintained by a contributing sponsor shall be
3 treated as a new single-employer plan for each of its first
4 5 plan years if, during the 36-month period ending on the
5 date of the adoption of such plan, the sponsor or any
6 member of such sponsor’s controlled group (or any prede-
7 cessor of either) did not establish or maintain a plan to
8 which this title applies with respect to which benefits were
9 accrued for substantially the same employees as are in the
10 new single-employer plan.

11 “(ii)(I) For purposes of this paragraph, the term
12 ‘small employer’ means an employer which on the first day
13 of any plan year has, in aggregation with all members of
14 the controlled group of such employer, 100 or fewer em-
15 ployees.

16 “(II) In the case of a plan maintained by two or more
17 contributing sponsors that are not part of the same con-
18 trolled group, the employees of all contributing sponsors
19 and controlled groups of such sponsors shall be aggregated
20 for purposes of determining whether any contributing
21 sponsor is a small employer.”

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to plans first effective after Decem-
24 ber 31, 2005.

1 **SEC. 407. PBGC PREMIUMS FOR SMALL AND NEW PLANS.**

2 (a) NEW PLANS.—Subparagraph (E) of section
3 4006(a)(3) of the Employee Retirement Income Security
4 Act of 1974 (29 U.S.C. 1306(a)(3)), as amended by this
5 Act, is amended by adding at the end the following new
6 clause:

7 “(iv) In the case of a new defined benefit plan, the
8 amount determined under clause (ii) for any plan year
9 shall be an amount equal to the product of the amount
10 determined under clause (ii) and the applicable percent-
11 age. For purposes of this clause, the term ‘applicable per-
12 centage’ means—

13 “(I) 0 percent, for the first plan year.

14 “(II) 20 percent, for the second plan year.

15 “(III) 40 percent, for the third plan year.

16 “(IV) 60 percent, for the fourth plan year.

17 “(V) 80 percent, for the fifth plan year.

18 For purposes of this clause, a defined benefit plan (as de-
19 fined in section 3(35)) maintained by a contributing spon-
20 sor shall be treated as a new defined benefit plan for each
21 of its first 5 plan years if, during the 36-month period
22 ending on the date of the adoption of the plan, the sponsor
23 and each member of any controlled group including the
24 sponsor (or any predecessor of either) did not establish
25 or maintain a plan to which this title applies with respect

1 to which benefits were accrued for substantially the same
2 employees as are in the new plan.”

3 (b) SMALL PLANS.—Paragraph (3) of section
4 4006(a) of the Employee Retirement Income Security Act
5 of 1974 (29 U.S.C. 1306(a)), is amended—

6 (1) by striking “The” in subparagraph (E)(i)
7 and inserting “Except as provided in subparagraph
8 (G), the”, and

9 (2) by inserting after subparagraph (F) the fol-
10 lowing new subparagraph:

11 “(G)(i) In the case of an employer who has 25 or
12 fewer employees on the first day of the plan year, the addi-
13 tional premium determined under subparagraph (E) for
14 each participant shall not exceed \$5 multiplied by the
15 number of participants in the plan as of the close of the
16 preceding plan year.

17 “(ii) For purposes of clause (i), whether an employer
18 has 25 or fewer employees on the first day of the plan
19 year is determined by taking into consideration all of the
20 employees of all members of the contributing sponsor’s
21 controlled group. In the case of a plan maintained by two
22 or more contributing sponsors, the employees of all con-
23 tributing sponsors and their controlled groups shall be ag-
24 gregated for purposes of determining whether the 25-or-
25 fewer-employees limitation has been satisfied.”

1 (c) EFFECTIVE DATES.—

2 (1) SUBSECTION (a).—The amendments made
3 by subsection (a) shall apply to plans first effective
4 after December 31, 2005.

5 (2) SUBSECTION (b).—The amendments made
6 by subsection (b) shall apply to plan years beginning
7 after December 31, 2005.

8 **SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
9 **PREMIUM OVERPAYMENT REFUNDS.**

10 (a) IN GENERAL.—Section 4007(b) of the Employ-
11 ment Retirement Income Security Act of 1974 (29 U.S.C.
12 1307(b)) is amended—

13 (1) by striking “(b)” and inserting “(b)(1)”,
14 and

15 (2) by inserting at the end the following new
16 paragraph:

17 “(2) The corporation is authorized to pay, subject to
18 regulations prescribed by the corporation, interest on the
19 amount of any overpayment of premium refunded to a des-
20 ignated payor. Interest under this paragraph shall be cal-
21 culated at the same rate and in the same manner as inter-
22 est is calculated for underpayments under paragraph (1).”

23 (b) EFFECTIVE DATE.—The amendments made by
24 subsection (a) shall apply to interest accruing for periods

1 beginning not earlier than the date of the enactment of
2 this Act.

3 **SEC. 409. RULES FOR SUBSTANTIAL OWNER BENEFITS IN**
4 **TERMINATED PLANS.**

5 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
6 Section 4022(b)(5) of the Employee Retirement Income
7 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
8 to read as follows:

9 “(5)(A) For purposes of this paragraph, the term
10 ‘majority owner’ means an individual who, at any time
11 during the 60-month period ending on the date the deter-
12 mination is being made—

13 “(i) owns the entire interest in an unincor-
14 porated trade or business,

15 “(ii) in the case of a partnership, is a partner
16 who owns, directly or indirectly, 50 percent or more
17 of either the capital interest or the profits interest
18 in such partnership, or

19 “(iii) in the case of a corporation, owns, directly
20 or indirectly, 50 percent or more in value of either
21 the voting stock of that corporation or all the stock
22 of that corporation.

23 For purposes of clause (iii), the constructive ownership
24 rules of section 1563(e) of the Internal Revenue Code of

1 1986 shall apply (determined without regard to section
2 1563(e)(3)(C)).

3 “(B) In the case of a participant who is a majority
4 owner, the amount of benefits guaranteed under this sec-
5 tion shall equal the product of—

6 “(i) a fraction (not to exceed 1) the numerator
7 of which is the number of years from the later of the
8 effective date or the adoption date of the plan to the
9 termination date, and the denominator of which is
10 10, and

11 “(ii) the amount of benefits that would be guar-
12 anteed under this section if the participant were not
13 a majority owner.”

14 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

15 (1) Section 4044(a)(4)(B) of the Employee Re-
16 tirement Income Security Act of 1974 (29 U.S.C.
17 1344(a)(4)(B)) is amended by striking “section
18 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

19 (2) Section 4044(b) of such Act (29 U.S.C.
20 1344(b)) is amended—

21 (A) by striking “(5)” in paragraph (2) and
22 inserting “(4), (5),” and

23 (B) by redesignating paragraphs (3)
24 through (6) as paragraphs (4) through (7), re-

1 spectively, and by inserting after paragraph (2)
2 the following new paragraph:

3 “(3) If assets available for allocation under
4 paragraph (4) of subsection (a) are insufficient to
5 satisfy in full the benefits of all individuals who are
6 described in that paragraph, the assets shall be allo-
7 cated first to benefits described in subparagraph (A)
8 of that paragraph. Any remaining assets shall then
9 be allocated to benefits described in subparagraph
10 (B) of that paragraph. If assets allocated to such
11 subparagraph (B) are insufficient to satisfy in full
12 the benefits described in that subparagraph, the as-
13 sets shall be allocated pro rata among individuals on
14 the basis of the present value (as of the termination
15 date) of their respective benefits described in that
16 subparagraph.”

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 4021 of the Employee Retirement
19 Income Security Act of 1974 (29 U.S.C. 1321) is
20 amended—

21 (A) in subsection (b)(9), by striking “as
22 defined in section 4022(b)(6)”, and

23 (B) by adding at the end the following new
24 subsection:

1 “(d) For purposes of subsection (b)(9), the term ‘sub-
2 stantial owner’ means an individual who, at any time dur-
3 ing the 60-month period ending on the date the determina-
4 tion is being made—

5 “(1) owns the entire interest in an unincor-
6 porated trade or business,

7 “(2) in the case of a partnership, is a partner
8 who owns, directly or indirectly, more than 10 per-
9 cent of either the capital interest or the profits inter-
10 est in such partnership, or

11 “(3) in the case of a corporation, owns, directly
12 or indirectly, more than 10 percent in value of either
13 the voting stock of that corporation or all the stock
14 of that corporation.

15 For purposes of paragraph (3), the constructive ownership
16 rules of section 1563(e) of the Internal Revenue Code of
17 1986 shall apply (determined without regard to section
18 1563(e)(3)(C)).”

19 (2) Section 4043(c)(7) of such Act (29 U.S.C.
20 1343(e)(7)) is amended by striking “section
21 4022(b)(6)” and inserting “section 4021(d)”.

22 (d) EFFECTIVE DATES.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by this section
25 shall apply to plan terminations—

1 (A) under section 4041(c) of the Employee
2 Retirement Income Security Act of 1974 (29
3 U.S.C. 1341(c)) with respect to which notices
4 of intent to terminate are provided under sec-
5 tion 4041(a)(2) of such Act (29 U.S.C.
6 1341(a)(2)) after December 31, 2005, and

7 (B) under section 4042 of such Act (29
8 U.S.C. 1342) with respect to which proceedings
9 are instituted by the corporation after such
10 date.

11 (2) CONFORMING AMENDMENTS.—The amend-
12 ments made by subsection (c) shall take effect on
13 January 1, 2006.

14 **SEC. 410. ACCELERATION OF PBGC COMPUTATION OF BEN-**
15 **EFITS ATTRIBUTABLE TO RECOVERIES FROM**
16 **EMPLOYERS.**

17 (a) MODIFICATION OF AVERAGE RECOVERY PER-
18 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-
19 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS
20 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the
21 Employee Retirement Income Security Act of 1974 (29
22 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

23 “(ii) notices of intent to terminate
24 were provided (or in the case of a termi-
25 nation by the corporation, a notice of de-

1 termination under section 4042 was
2 issued) during the 5-Federal fiscal year pe-
3 riod ending with the third fiscal year pre-
4 ceding the fiscal year in which occurs the
5 date of the notice of intent to terminate
6 (or the notice of determination under sec-
7 tion 4042) with respect to the plan termi-
8 nation for which the recovery ratio is being
9 determined.”

10 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR
11 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
12 PARTICIPANTS AND BENEFICIARIES.—Section 4044 of the
13 Employee Retirement Income Security Act of 1974 (29
14 U.S.C. 1362), as amended by this Act, is amended by add-
15 ing at the end the following new subsection:

16 “(f) VALUATION OF SECTION 4062(c) LIABILITY FOR
17 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
18 PARTICIPANTS AND BENEFICIARIES.—

19 “(1) IN GENERAL.—In the case of a terminated
20 plan, the value of the recovery of liability under sec-
21 tion 4062(c) allocable as a plan asset under this sec-
22 tion for purposes of determining the amount of ben-
23 efits payable by the corporation shall be determined
24 by multiplying—

1 “(A) the amount of liability under section
2 4062(c) as of the termination date of the plan,
3 by

4 “(B) the applicable section 4062(c) recovery
5 ratio.

6 “(2) SECTION 4062(c) RECOVERY RATIO.—For
7 purposes of this subsection—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (C), the term ‘section 4062(c) re-
10 covery ratio’ means the average, determined
11 with respect to prior plan terminations de-
12 scribed in subparagraph (B), of the ratio
13 which—

14 “(i) the value of the recovery under
15 section 4062(c) determined by the corpora-
16 tion in connection with any such prior ter-
17 mination, bears to

18 “(ii) the amount of liability under sec-
19 tion 4062(c) with respect to such plans as
20 of the termination date in connection with
21 any such prior termination.

22 “(B) PRIOR TERMINATIONS.—A plan ter-
23 mination described in this subparagraph is a
24 termination with respect to which—

1 plan termination to the trustee appointed
2 under section 4042 (b) or (c).

3 “(3) SUBSECTION NOT TO APPLY.—This sub-
4 section shall not apply with respect to the deter-
5 mination of—

6 “(A) whether the amount of outstanding
7 benefit liabilities exceeds \$20,000,000, or

8 “(B) the amount of any liability under sec-
9 tion 4062 to the corporation or the trustee ap-
10 pointed under section 4042 (b) or (c).

11 “(4) DETERMINATIONS.—Determinations under
12 this subsection shall be made by the corporation.
13 Such determinations shall be binding unless shown
14 by clear and convincing evidence to be unreason-
15 able.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply for any termination for which no-
18 tices of intent to terminate are provided (or in the case
19 of a termination by the corporation, a notice of determina-
20 tion under section 4042 under the Employee Retirement
21 Income Security Act of 1974 is issued) on or after the
22 date which is 30 days after the date of enactment of this
23 section.

1 **TITLE V—DISCLOSURE**

2 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.**

3 (a) IN GENERAL.—Section 101(f) of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1021(f)) is amended to read as follows:

6 “(f) DEFINED BENEFIT PLAN FUNDING NOTICES.—

7 “(1) IN GENERAL.—The administrator of a de-
8 fined benefit plan shall for each plan year provide a
9 plan funding notice to the Pension Benefit Guaranty
10 Corporation, to each plan participant and bene-
11 ficiary, to each labor organization representing such
12 participants or beneficiaries, and, in the case of a
13 multiemployer plan, to each employer that has an
14 obligation to contribute to the plan.

15 “(2) INFORMATION CONTAINED IN NOTICES.—

16 “(A) IDENTIFYING INFORMATION.—Each
17 notice required under paragraph (1) shall con-
18 tain identifying information, including the name
19 of the plan, the address and phone number of
20 the plan administrator and the plan’s principal
21 administrative officer, each plan sponsor’s em-
22 ployer identification number, and the plan num-
23 ber of the plan.

1 “(B) SPECIFIC INFORMATION.—A plan
2 funding notice under paragraph (1) shall
3 include—

4 “(i)(I) in the case of a single-employer
5 plan, a statement as to whether the plan’s
6 funding target attainment percentage (as
7 defined in section 303(d)(2)) for the plan
8 year to which the notice relates, and for
9 the 2 preceding plan years, is at least 100
10 percent (and, if not, the actual percent-
11 ages), or

12 “(II) in the case of a multiemployer
13 plan, a statement as to whether the plan’s
14 funded percentage (as defined in section
15 305(i)) for the plan year to which the no-
16 tice relates, and for the 2 preceding plan
17 years, is at least 100 percent (and, if not,
18 the actual percentages),

19 “(ii)(I) in the case of a single-em-
20 ployer plan, a statement of the value of the
21 plan’s assets and liabilities for the plan
22 year to which the notice relates as of the
23 last day of the plan year to which the no-
24 tice relates determined using the asset
25 valuation under subclause (I) of section

1 4006(a)(3)(E)(iii) and the interest rate
2 under subclause (II) of such section, and

3 “(II) in the case of a multiemployer
4 plan, a statement of the value of the plan’s
5 assets and liabilities for the plan year to
6 which the notice relates as the last day of
7 such plan year,

8 “(iii) a statement of the number of
9 participants who are—

10 “(I) retired or separated from
11 service and are receiving benefits;

12 “(II) retired or separated partici-
13 pants entitled to future benefits, and

14 “(II) active participants under
15 the plan,

16 “(iv) a statement setting forth the
17 funding policy of the plan and the asset al-
18 location of investments under the plan (ex-
19 pressed as percentages of total assets) as
20 of the end of the plan year to which the
21 notice relates,

22 “(v) in the case of a multiemployer
23 plan, whether the plan was in critical or
24 endangered status under section 305 for
25 such plan year and, if so—

1 “(I) a list of the actions taken by
2 the plan to improve its funding status,
3 and

4 “(II) a statement describing how
5 a person may obtain a copy of the
6 plan’s improvement or rehabilitation
7 plan, as appropriate, adopted under
8 section 305 and the actuarial and fi-
9 nancial data that demonstrate any ac-
10 tion taken by the plan toward fiscal
11 improvement,

12 “(vi) a summary of any funding im-
13 provement plan, rehabilitation plan, or
14 modification thereof adopted under section
15 305 during the plan year to which the no-
16 tice relates,

17 “(vii) in the case of any plan amend-
18 ments, scheduled benefit increase or reduc-
19 tion, or other known event taking effect in
20 the current plan year and having a mate-
21 rial effect on plan liabilities or assets for
22 the year (as defined in regulations by the
23 Secretary), an explanation of the amend-
24 ment, schedule increase or reduction, or
25 event, and a projection to the end of such

1 plan year of the effect of the amendment,
2 scheduled increase or reduction, or event
3 on plan liabilities,

4 “(viii)(I) in the case of a single-em-
5 ployer plan, a summary of the rules gov-
6 erning termination of single-employer plans
7 under subtitle C of title IV, or

8 “(II) in the case of a multiemployer
9 plan, a summary of the rules governing re-
10 organization or insolvency, including the
11 limitations on benefit payments and any
12 potential benefit reductions and suspen-
13 sions (and the potential effects of such lim-
14 itations, reductions, and suspensions on
15 the plan), and

16 “(ix) a general description of the ben-
17 efits under the plan which are eligible to be
18 guaranteed by the Pension Benefit Guar-
19 anty Corporation, along with an expla-
20 nation of the limitations on the guarantee
21 and the circumstances under which such
22 limitations apply.

23 “(C) OTHER INFORMATION.—Each notice
24 under paragraph (1) shall include—

1 “(i) in the case of a multiemployer
2 plan, a statement that the plan adminis-
3 trator shall provide, upon written request,
4 to any labor organization representing plan
5 participants and beneficiaries and any em-
6 ployer that has an obligation to contribute
7 to the plan, a copy of the annual report
8 filed with the Secretary under section
9 104(a), and

10 “(ii) any additional information which
11 the plan administrator elects to include to
12 the extent not inconsistent with regulations
13 prescribed by the Secretary.

14 “(3) TIME FOR PROVIDING NOTICE.—

15 “(A) IN GENERAL.—Any notice under
16 paragraph (1) shall be provided not later than
17 90 days after the end of the plan year to which
18 the notice relates.

19 “(B) EXCEPTION FOR SMALL PLANS.—In
20 the case of a small plan (as such term is used
21 under section 303(g)(2)(B)) any notice under
22 paragraph (1) shall be provided upon filing of
23 the annual report under section 104(a).

24 “(4) FORM AND MANNER.—Any notice under
25 paragraph (1)—

1 “(A) shall be provided in a form and man-
2 ner prescribed in regulations of the Secretary,

3 “(B) shall be written in a manner so as to
4 be understood by the average plan participant,
5 and

6 “(C) may be provided in written, elec-
7 tronic, or other appropriate form to the extent
8 such form is reasonably accessible to persons to
9 whom the notice is required to be provided.”.

10 (b) MODEL NOTICE.—Not later than 180 days after
11 the date of the enactment of this Act, the Secretary of
12 Labor shall publish a model version of the notice required
13 by section 101(f) of the Employee Retirement Income Se-
14 curity Act of 1974.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 2005.

18 **SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN IN-**
19 **FORMATION.**

20 (a) FINANCIAL INFORMATION WITH RESPECT TO
21 MULTIEMPLOYER PLANS.—

22 (1) IN GENERAL.—Section 101 of the Employee
23 Retirement Income Security Act of 1974 (29 U.S.C.
24 1021), as amended by this Act, is amended—

1 (A) by redesignating subsection (k) as sub-
2 section (l); and

3 (B) by inserting after subsection (j) the
4 following new subsection:

5 “(k) MULTIEMPLOYER PLAN INFORMATION MADE
6 AVAILABLE ON REQUEST.—

7 “(1) IN GENERAL.—Each administrator of a
8 multiemployer plan shall, upon written request, fur-
9 nish to any plan participant or beneficiary, employee
10 representative, or any employer that has an obliga-
11 tion to contribute to the plan—

12 “(A) a copy of any periodic actuarial re-
13 port (including sensitivity testing) received by
14 the plan for any plan year which has been in
15 receipt by the plan for at least 30 days, and

16 “(B)(i) a copy of any quarterly, semi-an-
17 nual, or annual financial report prepared for
18 the plan by any plan investment manager or ad-
19 visor or other fiduciary which has been the
20 plan’s possession for at least 30 days, or

21 “(ii) at the discretion of the person sub-
22 mitting the written request, a copy of a quar-
23 terly summary of the financial reports described
24 clause (i).

1 “(2) COMPLIANCE.—Information required to be
2 provided under paragraph (1) —

3 “(A) shall be provided to the requesting
4 participant, beneficiary, or employer within 30
5 days after the request in a form and manner
6 prescribed in regulations of the Secretary,

7 “(B) may be provided in written, elec-
8 tronic, or other appropriate form to the extent
9 such form is reasonably accessible to persons to
10 whom the information is required to be pro-
11 vided, and

12 “(C) shall not—

13 “(i) include any individually identifi-
14 able information regarding any plan partici-
15 pant, beneficiary, employee, fiduciary, or
16 contributing employer, or

17 “(ii) reveal any proprietary informa-
18 tion regarding the plan, any contributing
19 employer, or entity providing services to
20 the plan.

21 “(3) LIMITATIONS.—In no case shall a partici-
22 pant, beneficiary, or employer be entitled under this
23 subsection to receive more than one copy of any re-
24 port described in paragraph (1) during any one 12-
25 month period. The administrator may make a rea-

1 sonable charge to cover copying, mailing, and other
2 costs of furnishing copies of information pursuant to
3 paragraph (1). The Secretary may by regulations
4 prescribe the maximum amount which will constitute
5 a reasonable charge under the preceding sentence.”.

6 (2) ENFORCEMENT.—Section 502(c)(4) of such
7 Act (29 U.S.C. 1132(c)(4)), as amended by sub-
8 section (a), is amended by striking “section 101(j)”
9 and inserting “subsection (j) or (k) of section 101”.

10 (3) REGULATIONS.—The Secretary shall pre-
11 scribe regulations under section 101(j)(2) of the
12 Employee Retirement Income Security Act of 1974
13 (added by paragraph (1)) not later than 270 days
14 after the date of the enactment of this Act.

15 (b) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY
16 TO MULTIEMPLOYER PLANS.—

17 (1) IN GENERAL.—Section 101 of such Act (as
18 amended by subsection (b)) is amended—

19 (A) by redesignating subsection (l) as sub-
20 section (m); and

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

23 “(l) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-
24 ITY.—

1 “(1) IN GENERAL.—The plan sponsor or ad-
2 ministrators of a multiemployer plan shall, upon writ-
3 ten request, furnish to any employer who has an ob-
4 ligation to contribute to the plan a notice of—

5 “(A) the estimated amount which would be
6 the amount of such employer’s withdrawal li-
7 ability under part 1 of subtitle E of title IV if
8 such employer withdrew on the last day of the
9 plan year preceding the date of the request, in-
10 cluding separate calculations of the share of the
11 employer’s withdrawal liability attributable to
12 participant’s service with the employer and an
13 estimate of the employer’s proportional share of
14 any unfunded vested benefits which are not at-
15 tributable to service with the employer, as de-
16 termined under section 4211(c)(4), and

17 “(B) an explanation of how such estimated
18 liability amount was determined, including the
19 actuarial assumptions and methods used to de-
20 termine the value of the plan liabilities and as-
21 sets, the data regarding employer contributions,
22 unfunded vested benefits, annual changes in the
23 plan’s unfunded vested benefits, and the appli-
24 cation of any relevant limitations on the esti-
25 mated withdrawal liability.

1 For purposes of subparagraph (B), the term ‘em-
2 ployer contribution’ means, in connection with a par-
3 ticipant, a contribution made by an employer as an
4 employer of such participant.

5 “(2) COMPLIANCE.—Any notice required to be
6 provided under paragraph (1)—

7 “(A) shall be provided to the requesting
8 employer within—

9 “(i) 180 days after the request in a
10 form and manner prescribed in regulations
11 of the Secretary, or

12 “(ii) subject to regulations of the Sec-
13 retary, such longer time as may be nec-
14 essary in the case of a plan that deter-
15 mines withdrawal liability based on any
16 method described under paragraph (4) or
17 (5) of section 4211(c); and

18 “(B) may be provided in written, elec-
19 tronic, or other appropriate form to the extent
20 such form is reasonably accessible to employers
21 to whom the information is required to be pro-
22 vided.

23 “(3) LIMITATIONS.—In no case shall an em-
24 ployer be entitled under this subsection to receive
25 more than one notice described in paragraph (1)

1 during any one 12-month period. The person re-
2 quired to provide such notice may make a reasonable
3 charge to cover copying, mailing, and other costs of
4 furnishing such notice pursuant to paragraph (1).
5 The Secretary may by regulations prescribe the max-
6 imum amount which will constitute a reasonable
7 charge under the preceding sentence.”.

8 (2) ENFORCEMENT.—Section 502(c)(4) of such
9 Act (29 U.S.C. 1132(c)(4)) (as amended by para-
10 graph (1)) is amended by striking “subsection (j) or
11 (k) of section 101” and inserting “subsection (j),
12 (k), or (l) of section 101”.

13 (c) NOTICE OF AMENDMENT REDUCING FUTURE AC-
14 CRUALS.—Section 204(h)(1) of such Act (29 U.S.C.
15 1054(h)(1)) is amended by inserting at the end before the
16 period “and to each employer who has an obligation to
17 contribute to the plan.”.

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. 503. ADDITIONAL ANNUAL REPORTING REQUIRE-**
22 **MENTS.**

23 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-
24 MENTS WITH RESPECT TO DEFINED BENEFIT PLANS.—

1 (1) IN GENERAL.—Section 103 of the Employee
2 Retirement Income Security Act of 1974 (29 U.S.C.
3 1023) is amended—

4 (A) in subsection (a)(1)(B), by striking
5 “subsections (d) and (e)” and inserting “sub-
6 sections (d), (e), and (f)”; and

7 (B) by adding at the end the following new
8 subsection:

9 “(f) ADDITIONAL INFORMATION WITH RESPECT TO
10 DEFINED BENEFIT PLANS.—

11 “(1) GENERAL INFORMATION.—With respect to
12 any defined benefit plan, an annual report under
13 this section for a plan year shall include the fol-
14 lowing:

15 “(A) In any case in which any liabilities to
16 participants or their beneficiaries under such
17 plan as of the end of such plan year consist (in
18 whole or in part) of liabilities to such partici-
19 pants and beneficiaries under 2 or more pen-
20 sion plans as of immediately before such plan
21 year, the funded percentage of each of such 2
22 or more pension plans as of the last day of such
23 plan year and the funded percentage of the plan
24 with respect to which the annual report is filed
25 as of the last day of such plan year.

1 “(B) For purposes of this paragraph, the
2 term ‘funded percentage’—

3 “(i) in the case of a single-employer
4 plan, means the funding target attainment
5 percentage, as defined in section
6 303(d)(2), and

7 “(ii) in the case of a multiemployer
8 plan, has the meaning given such term in
9 section 305(i)(2).

10 “(2) ADDITIONAL INFORMATION FOR MULTIEM-
11 PLOYER PLANS.—With respect to any defined ben-
12 efit plan which is a multiemployer plan, an annual
13 report under this section for a plan year shall in-
14 clude, in addition to the information required under
15 paragraph (1), the following, as of the end of the
16 plan year to which the notice relates:

17 “(A) The number of employers obligated to
18 contribute to the plan.

19 “(B) A list of the employers that contrib-
20 uted more than 5 percent of the total contribu-
21 tions to the plan during such plan year.

22 “(C) The number of participants under the
23 plan on whose behalf no employer contributions
24 have been made to the plan for such plan year
25 and for each of the 2 preceding plan years. For

1 purposes of this paragraph, the term ‘employer
2 contribution’ means, in connection with a par-
3 ticipant, a contribution made by an employer as
4 an employer of such participant.

5 “(D) The ratio of—

6 “(i) the number of participants under
7 the plan on whose behalf no employer had
8 an obligation to make an employer con-
9 tribution during the plan year, to

10 “(ii) 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 each of the 2 preceding
14 plan years.

15 “(E) Whether the plan received an amorti-
16 zation extension under section 304(d) or section
17 431(d) of the Internal Revenue Code of 1986
18 for such plan year and, if so, the amount of the
19 difference between the minimum required con-
20 tribution for the year and the minimum re-
21 quired contribution which would have been re-
22 quired without regard to the extension, and the
23 period of such extension.

24 “(F) Whether the plan used the shortfall
25 funding method (as such term is used in section

1 305) for such plan year and, if so, the amount
2 of the difference between the minimum required
3 contribution for the year and the minimum re-
4 quired contribution which would have been re-
5 quired without regard to the use of such meth-
6 od, and the period of use of such method.

7 “(G) Whether the plan was in critical or
8 endangered status under section 305 for such
9 plan year, and if so, a summary of any funding
10 improvement or rehabilitation plan (or modi-
11 fication thereto) adopted during the plan year,
12 and the funding ratio of the plan.

13 “(H) The number of employers that with-
14 drew from the plan during the preceding plan
15 year and the aggregate amount of withdrawal
16 liability assessed, or estimated to be assessed,
17 against such withdrawn employers.

18 “(I) In the case of a multiemployer plan
19 that has merged with another plan or to which
20 assets and liabilities have been transferred, the
21 actuarial valuation of the assets and liabilities
22 of each affected plan during the year preceding
23 the effective date of the merger or transfer,
24 based upon the most recent data available as of
25 the day before the first day of the plan year, or

1 other valuation method performed under stand-
2 ards and procedures as the Secretary may pre-
3 scribe by regulation.”.

4 (2) GUIDANCE BY SECRETARY OF LABOR.—

5 (A) IN GENERAL.—Not later than 180
6 days after the date of enactment of this Act,
7 the Secretary of Labor (referred to in this para-
8 graph as the “Secretary”) shall publish guid-
9 ance to assist multiemployer defined benefit
10 plans to—

11 (i) identify and enumerate plan par-
12 ticipants for whom there is no employer
13 with an obligation to make an employer
14 contribution under the plan; and

15 (ii) report such information under sec-
16 tion 103(f)(2)(D) of the Employee Retirement
17 Income Security Act of 1974 (as
18 added by this section).

19 (B) WAIVER OF REQUIREMENT.—The Sec-
20 retary shall waive the requirement under sec-
21 tion 103(f)(2)(D) of such Act (as added by this
22 section) for the construction and entertainment
23 industries.

24 (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-
25 ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-

1 JECTIONS.—Section 103(d) of such Act (29 U.S.C.
2 1023(d)) is amended—

3 (1) by redesignating paragraphs (12) and (13)
4 as paragraphs (13) and (14), respectively; and

5 (2) by inserting after paragraph (11) the fol-
6 lowing new paragraph:

7 “(12) A statement explaining the actuarial as-
8 sumptions and methods used in projecting future re-
9 tirements and forms of benefit distributions under
10 the plan.”.

11 (c) DISCLOSURE OF PLAN ASSETS AND LIABILITIES
12 IN SUMMARY ANNUAL REPORT.—Section 104(b)(3) of
13 such Act (29 U.S.C. 1024(b)(3)) is amended by—

14 (1) striking “(3) Within” and inserting—

15 “(A) IN GENERAL.—Within”; and

16 (2) adding at the end the following:

17 “(B) FORM OF REPORT; ADDITIONAL IN-
18 FORMATION.—The material provided pursuant
19 to subparagraph (A) to summarize the latest
20 annual report shall be written in a manner cal-
21 culated to be understood by the average plan
22 participant and shall—

23 “(i) set forth the total assets and li-
24 abilities of the plan for the plan year for
25 which the latest annual report was filed

1 and for each of the 2 preceding plan years,
2 as reported in the annual report for each
3 such plan year under this section; and

4 “(ii) include the information described
5 in section 103(f)(2)(G), as reported in the
6 annual report for such plan year.”.

7 (d) FURNISHING SUMMARY PLAN INFORMATION TO
8 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF
9 MULTIEMPLOYER PLANS.—

10 (1) IN GENERAL.—Section 104 of such Act (29
11 U.S.C. 1024) is amended—

12 (A) in the header, by striking “PARTICI-
13 PANTS” and inserting “PARTICIPANTS AND CER-
14 TAIN EMPLOYERS”;

15 (B) redesignating subsection (d) as sub-
16 section (e); and

17 (C) inserting after subsection (c) the fol-
18 lowing:

19 “(d) FURNISHING SUMMARY PLAN INFORMATION TO
20 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF
21 MULTIEMPLOYER PLANS.—

22 “(1) IN GENERAL.—With respect to a multiem-
23 ployer plan subject to this section, within 30 days
24 after the due date under subsection (a)(1) for the
25 filing of the annual report for the fiscal year of the

1 plan, the administrators shall furnish to each em-
2 ployee organization, employer with an obligation to
3 contribute to the plan, and the Pension Benefit
4 Guaranty Corporations, a report that contains—

5 “(A) a description of the contribution
6 schedules and benefit formulas under the plan,
7 and any modification to such schedules and for-
8 mulas, during such plan year;

9 “(B) the number of employers obligated to
10 contribute to the plan;

11 “(C) a list of the employers that contrib-
12 uted more than 5 percent of the total contribu-
13 tions to the plan during such plan year;

14 “(D) the number of participants under the
15 plan on whose behalf no employer contributions
16 (which, for purposes of this paragraph, means,
17 in connection with a participant, a contribution
18 made by an employer as an employer of such
19 participant) have been made to the plan for
20 such plan year and for each of the 2 preceding
21 plan years;

22 “(E) whether the plan was in critical or
23 endangered status under section 305 for such
24 plan year and, if so, include—

1 “(i) a list of the actions taken by the
2 plan to improve its funding status; and

3 “(ii) a statement describing how a
4 person may obtain a copy of the plan’s im-
5 provement or rehabilitation plan, as appro-
6 priate, adopted under section 305 and the
7 actuarial and financial data that dem-
8 onstrate any action taken by the plan to-
9 ward fiscal improvement;

10 “(H) the number of employers that with-
11 drew from the plan during the preceding plan
12 year and the aggregate amount of withdrawal
13 liability assessed, or estimated to be assessed,
14 against such withdrawn employers;

15 “(I) in the case of a multiemployer plan
16 that has merged with another plan or to which
17 assets and liabilities have been transferred, the
18 actuarial valuation of the assets and liabilities
19 of each affected plan during the year preceding
20 the effective date of the merger or transfer,
21 based upon the most recent data available as of
22 the day before the first day of the plan year, or
23 other valuation method performed under stand-
24 ards and procedures as the Secretary may pre-
25 scribe by regulation;

1 “(J) a description as to whether the
2 plan—

3 “(i) sought or received an amortiza-
4 tion extension under section 304(d) or sec-
5 tion 431(d) of the Internal Revenue Code
6 of 1986 for such plan year;

7 “(ii) used the shortfall funding meth-
8 od (as such term is used in section 305)
9 for such plan year; or

10 “(iii) was in critical or endangered
11 status under section 305 for such plan
12 year; and

13 “(K) notification of the right under this
14 section of the recipient to a copy of the annual
15 report filed with the Secretary under subsection
16 (a), summary annual report, summary plan de-
17 scription, summary of any material modification
18 of the plan, upon written request, but that—

19 “(i) in no case shall a recipient be en-
20 titled to receive more than one copy of any
21 such report described during any one 12-
22 month period; and

23 “(ii) the administrator may make a
24 reasonable charge to cover copying, mail-
25 ing, and other costs of furnishing copies of

1 information pursuant to this subpara-
2 graph.

3 “(2) EFFECT OF SECTION.—Nothing in this
4 section waives any other provision under this title re-
5 quiring plan administrators to provide, upon request,
6 information to employers that have an obligation to
7 contribution under the plan.”.

8 (f) MODEL FORM.—Not later than 270 days after the
9 date of the enactment of this Act, the Secretary of Labor
10 shall publish a model form for providing the statements,
11 schedules, and other material required to be provided
12 under section 104(b)(3) of the Employee Retirement In-
13 come Security Act of 1974, as amended by this section.

14 (g) FIVE-YEAR REPORT WITH RESPECT TO MULTI-
15 EMPLOYER PLANS.—The Pension Benefit Guaranty Cor-
16 poration shall, every 5 years, submit to Congress a report
17 that contains a description of the fiscal conditions of the
18 multiemployer pension plan system as of the date of such
19 report based on the information submitted to such Cor-
20 poration under section 104(d) of the Employee Retirement
21 Income Security Act of 1974 (as added by this section).

22 (h) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by
24 this section shall apply to plan years beginning after
25 December 31, 2005.

1 (2) SPECIAL RULE.—Notwithstanding the pro-
2 visions of paragraph (1), the requirement under sec-
3 tion 103(f)(2)(D) of the Employee Retirement In-
4 come Security Act (as added by this section) shall
5 apply to plan years beginning after December 31,
6 2007.

7 **SEC. 504. TIMING OF ANNUAL REPORTING REQUIREMENTS.**

8 (a) FILING AFTER 275 DAYS AFTER PLAN YEAR
9 ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of
10 such Act (29 U.S.C. 1024(a)(1)) is amended by inserting
11 after the first sentence the following new sentence: “In
12 the case of a pension plan, the Secretary may extend the
13 deadline for filing the annual report for any plan year past
14 275 days after the close of the plan year only on a case
15 by case basis and only in cases of hardship, in accordance
16 with regulations which shall be prescribed by the Sec-
17 retary.”.

18 (b) INTERNET DISPLAY OF INFORMATION.—Section
19 104(b) of such Act (29 U.S.C. 1024(b)) is amended by
20 adding at the end the following:

21 “(5) Identification and basic plan information and ac-
22 tuarial information included in the annual report for any
23 plan year shall be filed with the Secretary in an electronic
24 format which accommodates display on the Internet, in ac-
25 cordance with regulations which shall be prescribed by the

1 Secretary. The Secretary shall provide for display of such
2 information included in the annual report, within 90 days
3 after the date of the filing of the annual report, on an
4 Internet website maintained by the Secretary and other
5 appropriate media. Such information shall also be dis-
6 played on any Internet website maintained by the plan
7 sponsor (or by the plan administrator on behalf of the plan
8 sponsor), in accordance with regulations which shall be
9 prescribed by the Secretary.”.

10 (c) SUMMARY ANNUAL REPORT FILED WITHIN 15
11 DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-
12 PORT.—Section 104(b)(3) of such Act (29 U.S.C.
13 1024(b)(3)), as amended by section 503, is amended by—

14 (1) striking “(3)(A) Within 210 days after the
15 close of the fiscal year,” and inserting “(3)(A) With-
16 in 30 days after the due date under subsection
17 (a)(1) for the filing of the annual report for the fis-
18 cal year of the plan”;

19 (2) striking “the latest” and inserting “such”;
20 and

21 (3) adding at the end the following

22 “(C) DATE OF INTERNET DISPLAY.—Dis-
23 play of the summary annual report on the
24 Internet website maintained by the plan spon-
25 sor (or by the plan administrator on behalf of

1 the plan sponsor) by the date required under
2 subparagraph (A) shall be treated as furnishing
3 such report to each participant and beneficiary
4 receiving benefits under the plan by such date,
5 except that such report shall be furnished to
6 each such participant and beneficiary as soon
7 as practicable thereafter, and in no event later
8 the 30 days after such date.”.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to plan years beginning after De-
11 cember 31, 2005.

12 **SEC. 505. SECTION 4010 FILINGS WITH THE PBGC.**

13 (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED
14 TO PROVIDE INFORMATION TO PBGC.—Section 4010(b)
15 of the Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1310(b)) is amended—

17 (1) in paragraph (1), by inserting at the end
18 before the semicolon, “and the aggregate funding
19 targets attainment percentage of such plans (as de-
20 fined in subsection (d)(2)) is less than 90 percent”;
21 and

22 (2) by redesignating paragraphs (2) and (3) as
23 paragraphs (4) and (5), respectively, and by insert-
24 ing before paragraph (4) (as so redesignated) the
25 following new paragraphs:

1 “(2) the aggregate funding targets attainment
2 percentage of the plan (as defined in subsection
3 (d)(2)) is less than 60 percent;

4 “(3)(A) the aggregate funding targets attain-
5 ment percentage of the plan (as defined in sub-
6 section (d)(2)) is less than 75 percent, and

7 “(B) the plan sponsor is in an industry with re-
8 spect to which the corporation determines that there
9 is substantial unemployment or underemployment
10 and the sales and profits are depressed or declin-
11 ing;”.

12 (b) NOTICE TO PARTICIPANTS AND BENE-
13 FICIARIES.—Section 4010 of the Employee Retirement In-
14 come Security Act of 1974 (29 U.S.C. 1310) is amended
15 by adding at the end the following new subsection:

16 “(d) NOTICE TO PARTICIPANTS AND BENE-
17 FICIARIES.—

18 “(1) IN GENERAL.—Not later than 90 days
19 after the submission by any person to the corpora-
20 tion of information or documentary material with re-
21 spect to any plan pursuant to subsection (a), such
22 person shall provide notice of such submission to
23 each participant and beneficiary under the plan (and
24 under all plans maintained by members of the con-

1 trolled group of each contributing sponsor of the
2 plan). Such notice shall also set forth—

3 “(A) the number of single-employer plans
4 covered by this title which are in at-risk status
5 and are maintained by contributing sponsors of
6 such plan (and by members of their controlled
7 groups) with respect to which the funding tar-
8 get attainment percentage for the preceding
9 plan year of each plan is less than 60 percent;

10 “(B) the value of the assets of each of the
11 plans described in subparagraph (A) for the
12 plan year, the funding target for each of such
13 plans for the plan year, and the funding target
14 attainment percentage of each of such plans for
15 the plan year; and

16 “(C) taking into account all single-em-
17 ployer plans maintained by the contributing
18 sponsor and the members of its controlled
19 group as of the end of such plan year—

20 “(i) the aggregate total of the values
21 of plan assets of such plans as of the end
22 of such plan year,

23 “(ii) the aggregate total of the fund-
24 ing targets of such plans, as of the end of
25 such plan year, taking into account only

1 benefits to which participants and bene-
2 ficiaries have a nonforfeitable right, and

3 “(iii) the aggregate funding targets
4 attainment percentage with respect to the
5 contributing sponsor for the preceding plan
6 year.

7 “(2) DEFINITIONS.—For purposes of this
8 subsection—

9 “(A) VALUE OF PLAN ASSETS.—The term
10 ‘value of plan assets’ means the value of plan
11 assets, as determined under section 303(g)(3).

12 “(B) FUNDING TARGET.—The term ‘fund-
13 ing target’ has the meaning provided under sec-
14 tion 303(d)(1).

15 “(C) FUNDING TARGET ATTAINMENT PER-
16 CENTAGE.—The term ‘funding target attain-
17 ment percentage’ has the meaning provided in
18 section 303(d)(2).

19 “(D) AGGREGATE FUNDING TARGETS AT-
20 TAINMENT PERCENTAGE.—The term ‘aggregate
21 funding targets attainment percentage’ means,
22 with respect to a contributing sponsor for a
23 plan year, the percentage, taking into account
24 all plans maintained by the contributing spon-

1 sor and the members of its controlled group as
2 of the end of such plan year, which—

3 “(i) the aggregate total of the values
4 of plan assets, as of the end of such plan
5 year, of such plans, is of

6 “(ii) the aggregate total of the fund-
7 ing targets of such plans, as of the end of
8 such plan year, taking into account only
9 benefits to which participants and bene-
10 ficiaries have a nonforfeitable right.

11 “(E) AT-RISK STATUS.—The term ‘at-risk
12 status’ has the meaning provided in section
13 303(i)(4).

14 “(3) COMPLIANCE.—

15 “(A) IN GENERAL.—Any notice required to
16 be provided under paragraph (1) may be pro-
17 vided in written, electronic, or other appropriate
18 form to the extent such form is reasonably ac-
19 cessible to individuals to whom the information
20 is required to be provided.

21 “(B) LIMITATIONS.—In no case shall a
22 participant or beneficiary be entitled under this
23 subsection to receive more than one notice de-
24 scribed in paragraph (1) during any one 12-
25 month period. The person required to provide

1 representative of the participants or
2 beneficiaries that agrees to ensure the
3 confidentiality of such information.

4 “(iii) FORM AND MANNER OF INFOR-
5 MATION; CHARGES.—

6 “(I) FORM AND MANNER.—The
7 corporation may prescribe the form
8 and manner of the provision of infor-
9 mation under this subparagraph,
10 which shall include delivery in written,
11 electronic, or other appropriate form
12 to the extent that such form is rea-
13 sonably accessible to individuals to
14 whom the information is required to
15 be provided.

16 “(II) REASONABLE CHARGES.—A
17 plan sponsor may charge a reasonable
18 fee for any information provided
19 under this subparagraph in other than
20 electronic form.

21 “(iv) AUTHORIZED REPRESENTA-
22 TIVE.—For purposes of this subparagraph,
23 the term ‘authorized representative’ means
24 any employee organization representing
25 participants in the pension plan.”.

1 (2) CONFORMING AMENDMENT.—Section
2 4041(c)(1) of the Employee Retirement Income Se-
3 curity Act of 1974 (29 U.S.C. 1341(c)(1)) is amend-
4 ed in subparagraph (C) by striking “subparagraph
5 (B)” and inserting “subparagraphs (B) and (D)”.

6 (b) INVOLUNTARY TERMINATIONS.—

7 (1) IN GENERAL.—Section 4042(c) of the Em-
8 ployee Retirement Income Security Act of 1974 (29
9 U.S.C. 1342(c)) is amended by—

10 (A) striking “(c) If the” and inserting

11 “(c)(1) If the”;

12 (B) redesignating paragraph (3) as para-
13 graph (2); and

14 (C) adding at the end the following:

15 “(3) DISCLOSURE OF TERMINATION INFORMA-
16 TION.—

17 “(A) IN GENERAL.—

18 “(i) INFORMATION FROM PLAN SPON-
19 SOR OR ADMINISTRATOR.—A plan sponsor
20 or plan administrator of a single-employer
21 plan that has received a notice from the
22 corporation of a determination that the
23 plan should be terminated under this sec-
24 tion shall provide to an affected party any

1 information provided to the corporation in
2 conjunction with the plan termination.

3 “(ii) INFORMATION FROM CORPORA-
4 TION.—The corporation shall provide a
5 copy of the administrative record, includ-
6 ing the trusteeship decision record of a ter-
7 mination of a plan described under clause
8 (i).

9 “(B) TIMING OF DISCLOSURE.—The plan
10 sponsor, plan administrator, or the corporation,
11 as applicable, shall provide the information de-
12 scribed in subparagraph (A) not later than 15
13 days after—

14 “(i) receipt of a request from an af-
15 fected party for such information; or

16 “(ii) in the case of information de-
17 scribed under subparagraph (A)(i), the
18 provision of any new information to the
19 corporation relating to a previous request
20 by an affected party.

21 “(C) CONFIDENTIALITY.—

22 “(i) IN GENERAL.—The plan adminis-
23 trator and plan sponsor shall not provide
24 information under subparagraph (A)(i) in
25 a form which includes any information that

1 may directly or indirectly be associated
2 with, or otherwise identify, an individual
3 participant or beneficiary.

4 “(ii) LIMITATION.—A court may limit
5 disclosure under this paragraph of con-
6 fidential information described in section
7 552(b) of title 5, United States Code, to
8 authorized representatives (within the
9 meaning of section 4041(c)(2)(D)(iv)) of
10 the participants or beneficiaries that agree
11 to ensure the confidentiality of such infor-
12 mation.

13 “(D) FORM AND MANNER OF INFORMA-
14 TION; CHARGES.—

15 “(i) FORM AND MANNER.—The cor-
16 poration may prescribe the form and man-
17 ner of the provision of information under
18 this paragraph, which shall include delivery
19 in written, electronic, or other appropriate
20 form to the extent that such form is rea-
21 sonably accessible to individuals to whom
22 the information is required to be provided.

23 “(ii) REASONABLE CHARGES.—A plan
24 sponsor may charge a reasonable fee for

1 any information provided under this para-
2 graph in other than electronic form.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to any plan termination under title
5 IV of the Employee Retirement Income Security Act of
6 1974 (29 U.S.C. 1301 et seq.) with respect to which the
7 notice of intent to terminate (or in the case of a termi-
8 nation by the Pension Benefit Guaranty Corporation, a
9 notice of determination under section 4042 of such Act
10 (29 U.S.C. 1342)) occurs after the date of enactment of
11 this Act.

12 **TITLE VI—TREATMENT OF CASH**
13 **BALANCE AND OTHER HY-**
14 **BRID DEFINED BENEFIT PEN-**
15 **SION PLANS**

16 **SEC. 601. PROSPECTIVE APPLICATION OF AGE DISCRIMINA-**
17 **TION, CONVERSION, AND PRESENT VALUE AS-**
18 **SUMPTION RULES.**

19 (a) APPLICATION OF AGE DISCRIMINATION PROHIBI-
20 TIONS.—

21 (1) AMENDMENT OF ERISA.—Section 204(b) of
22 the Employee Retirement Income Security Act of
23 1974 (29 U.S.C. 1054(b)) is amended by adding at
24 the end the following:

1 “(5) SPECIAL RULE FOR CASH BALANCE AND
2 OTHER HYBRID DEFINED BENEFIT PLANS.—

3 “(A) IN GENERAL.—A qualified cash bal-
4 ance plan shall not be treated as violating the
5 requirements of paragraph (1)(H) merely be-
6 cause it may reasonably be expected that the
7 period over which interest credits will be made
8 to a participant’s accumulation account (or its
9 equivalent) is longer for a younger participant.
10 This paragraph shall not apply to any plan if
11 the rate of any pay credit or interest credit to
12 such an account under the plan decreases by
13 reason of the participant’s attainment of any
14 age.

15 “(B) QUALIFIED CASH BALANCE PLAN.—
16 For purposes of this paragraph—

17 “(i) IN GENERAL.—The term ‘quali-
18 fied cash balance plan’ means a cash bal-
19 ance plan which meets the vesting require-
20 ment under clause (ii) and the interest
21 credit requirement under clause (iii).

22 “(ii) VESTING REQUIREMENTS.—A
23 plan meets the requirements of this clause
24 if an employee who has completed at least
25 3 years of service has a nonforfeitable

1 right to 100 percent of the employee's ac-
2 crued benefit derived from employer con-
3 tributions.

4 “(iii) INTEREST CREDITS.—A plan
5 meets the requirements of this clause if the
6 terms of the plan provide that any interest
7 credit (or equivalent amount) for any plan
8 year shall be at a rate which—

9 “(I) is not less than the applica-
10 ble Federal mid-term interest rate (as
11 determined under section 1274(d)(1)
12 of the Internal Revenue Code of
13 1986), and

14 “(II) is not greater than the
15 greater of the rate determined under
16 subclause (I) or a rate equal to the
17 rate of interest on amounts invested
18 conservatively in long-term investment
19 grade corporate bonds.

20 “(iv) DETERMINATION OF RATES.—
21 For purposes of clause (iii)(II), the rate of
22 interest on amounts invested conservatively
23 in long-term investment grade corporate
24 bonds shall be determined by the Secretary
25 of the Treasury on the basis of 2 or more

1 indices that are selected periodically by the
2 Secretary of the Treasury and that are in
3 the top 3 quality levels available. The Sec-
4 retary of the Treasury shall make publicly
5 available the indices and methodology used
6 to determine the rate.

7 “(v) VARIABLE RATE OF INTEREST.—
8 If the interest credit rate under the plan is
9 a variable rate, the plan shall provide that,
10 upon the termination of the plan, the rate
11 of interest used to determine accrued bene-
12 fits under the plan shall be equal to the av-
13 erage of the rates of interest used under
14 the plan during the 5-year period ending
15 on the termination date.

16 “(C) CASH BALANCE PLAN.—For purposes
17 of this paragraph, the term ‘cash balance plan’
18 means a defined benefit plan under which—

19 “(i) the accrued benefit is determined
20 by reference to the balance of a hypo-
21 thetical accumulation account, and

22 “(ii) pay credits and interest credits
23 are credited to such account.

24 “(D) REGULATIONS TO INCLUDE SIMILAR
25 OR OTHER HYBRID PLANS.—

1 “(i) CASH BALANCE PLAN.—The Sec-
2 retary of the Treasury shall issue regula-
3 tions which include in the definition of
4 cash balance plan any defined benefit plan
5 (or any portion of such a plan) which has
6 an effect similar to a cash balance plan.
7 Such regulations may provide that if a
8 plan sponsor represents in communications
9 to participants and beneficiaries that a
10 plan amendment results in a plan being
11 described in the preceding sentence, such
12 plan shall be treated as a cash balance
13 plan.

14 “(ii) QUALIFIED CASH BALANCE
15 PLAN.—The Secretary of the Treasury
16 may in the regulations issued under clause
17 (i) provide for the treatment of a cash bal-
18 ance plan as a qualified cash balance plan
19 in cases where the cash balance plan has
20 an effect similar to the qualified cash bal-
21 ance plan.”.

22 (2) AGE DISCRIMINATION IN EMPLOYMENT
23 ACT.—Section 4(i)(2) of the Age Discrimination of
24 Employment Act of 1967 (29 U.S.C. 623(i)(2)) is
25 amended—

1 (A) by inserting “(A)” after “(2)”, and

2 (B) by adding at the end the following new
3 subparagraph:

4 “(B) A defined benefit plan which is treated as a
5 qualified cash balance plan for purposes of section
6 204(b)(5) of the Employee Retirement Income Security
7 Act of 1974 shall not be treated as violating the require-
8 ments of paragraph (1)(A) merely because it may reason-
9 ably be expected that the period over which interest credits
10 will be made under the plan to a participant’s accumula-
11 tion account (or its equivalent) is longer for a younger
12 participant. This subparagraph shall not apply to any plan
13 if the rate of any pay credit or interest credit to such an
14 account under the plan decreases by reason of the partici-
15 pant’s attainment of any age.”.

16 (3) AMENDMENT OF INTERNAL REVENUE
17 CODE.—Section 411(b) of the Internal Revenue
18 Code of 1986 (relating to accrued benefit require-
19 ments) is amended by adding at the end the fol-
20 lowing:

21 “(5) SPECIAL RULE FOR CASH BALANCE AND
22 OTHER HYBRID DEFINED BENEFIT PLANS.—

23 “(A) IN GENERAL.—A qualified cash bal-
24 ance plan shall not be treated as violating the
25 requirements of paragraph (1)(H) merely be-

1 cause it may reasonably be expected that the
2 period over which interest credits will be made
3 to a participant's accumulation account (or its
4 equivalent) is longer for a younger participant.
5 This paragraph shall not apply to any plan if
6 the rate of any pay credit or interest credit to
7 such an account under the plan decreases by
8 reason of the participant's attainment of any
9 age.

10 “(B) QUALIFIED CASH BALANCE PLAN.—

11 For purposes of this paragraph—

12 “(i) IN GENERAL.—The term ‘quali-
13 fied cash balance plan’ means a cash bal-
14 ance plan which meets the vesting require-
15 ment under clause (ii) and the interest
16 credit requirement under clause (iii).

17 “(ii) VESTING REQUIREMENTS.—A
18 plan meets the requirements of this clause
19 if an employee who has completed at least
20 3 years of service has a nonforfeitable
21 right to 100 percent of the employee's ac-
22 crued benefit derived from employer con-
23 tributions.

24 “(iii) INTEREST CREDITS.—A plan
25 meets the requirements of this clause if the

1 terms of the plan provide that any interest
2 credit (or equivalent amount) for any plan
3 year shall be at a rate which—

4 “(I) is not less than the applica-
5 ble Federal mid-term interest rate (as
6 determined under section 1274(d)(1)),
7 and

8 “(II) is not greater than the
9 greater of the rate determined under
10 subclause (I) or a rate equal to the
11 rate of interest on amounts invested
12 conservatively in long-term investment
13 grade corporate bonds.

14 “(iv) DETERMINATION OF RATES.—
15 For purposes of clause (iii)(II), the rate of
16 interest on amounts invested conservatively
17 in long-term investment grade corporate
18 bonds shall be determined by the Secretary
19 on the basis of 2 or more indices that are
20 selected periodically by the Secretary and
21 that are in the top 3 quality levels avail-
22 able. The Secretary shall make publicly
23 available the indices and methodology used
24 to determine the rate.

1 “(v) VARIABLE RATE OF INTEREST.—

2 If the interest credit rate under the plan is
3 a variable rate, the plan shall provide that,
4 upon the termination of the plan, the rate
5 of interest used to determine accrued bene-
6 fits under the plan shall be equal to the av-
7 erage of the rates of interest used under
8 the plan during the 5-year period ending
9 on the termination date.

10 “(C) CASH BALANCE PLAN.—For purposes
11 of this paragraph, the term ‘cash balance plan’
12 means a defined benefit plan under which—

13 “(i) the accrued benefit is determined
14 by reference to the balance of a hypo-
15 thetical accumulation account, and

16 “(ii) pay credits and interest credits
17 are credited to such account.

18 “(D) REGULATIONS TO INCLUDE SIMILAR
19 OR OTHER HYBRID PLANS.—

20 “(i) CASH BALANCE PLAN.—The Sec-
21 retary shall issue regulations which include
22 in the definition of cash balance plan any
23 defined benefit plan (or any portion of
24 such a plan) which has an effect similar to
25 a cash balance plan. Such regulations may

1 provide that if a plan sponsor represents in
2 communications to participants and bene-
3 ficiaries that a plan amendment results in
4 a plan being described in the preceding
5 sentence, such plan shall be treated as a
6 cash balance plan.

7 “(ii) QUALIFIED CASH BALANCE
8 PLAN.—The Secretary may in the regula-
9 tions issued under clause (i) provide for
10 the treatment of a cash balance plan as a
11 qualified cash balance plan in cases where
12 the cash balance plan has an effect similar
13 to the qualified cash balance plan.”.

14 (b) RULES APPLICABLE TO ACCRUED BENEFITS
15 UNDER CONVERTED PLANS.—

16 (1) AMENDMENT OF ERISA.—Section 204(g) of
17 the Employee Retirement Income Security Act of
18 1974 (29 U.S.C. 1054(g)) is amended by adding at
19 the end the following new paragraph:

20 “(6) TREATMENT OF CONVERSIONS TO CASH
21 BALANCE OR OTHER HYBRID PLANS.—

22 “(A) IN GENERAL.—For purposes of para-
23 graph (1), an applicable plan amendment shall
24 be treated as reducing the accrued benefit of a
25 participant if, under the terms of the plan as in

1 effect after the amendment, the accrued benefit
2 of any participant who was a participant as of
3 the effective date of the amendment may at any
4 time be less than the accrued benefit deter-
5 mined under the method under subparagraph
6 (B), (C), or (D) which is specified in the plan
7 and applies uniformly to all participants. An
8 applicable plan amendment shall in no event be
9 treated as meeting the requirements of any
10 such subparagraph if the conversion described
11 in subparagraph (G)(i) is into a cash balance
12 plan other than a qualified cash balance plan
13 (as defined in subsection (b)(5)(B)).

14 “(B) NO WEARAWAY.—

15 “(i) IN GENERAL.—The accrued ben-
16 efit determined under this subparagraph is
17 the sum of—

18 “(I) the participant’s accrued
19 benefit for years of service before the
20 effective date of the amendment, de-
21 termined under the terms of the plan
22 as in effect before the amendment,
23 plus

24 “(II) except as provided in clause
25 (ii), the participant’s accrued benefit

1 for years of service after the effective
2 date of the amendment, determined
3 under the terms of the plan as in ef-
4 fect after the amendment.

5 A similar rule shall apply in the case of
6 any early retirement benefit or retirement-
7 type subsidy (within the meaning of section
8 204(g)(2)(A)).

9 “(ii) REQUIRED AMOUNTS FOR CER-
10 TAIN PERIODS.—Notwithstanding clause
11 (i)(II), the plan shall provide that either—

12 “(I) the accrued benefit of all
13 participants for each of the first 5
14 plan years to which the amendment
15 applies shall be equal to the greater of
16 the accrued benefit determined under
17 the terms of the plan as in effect both
18 before and after the amendment, or

19 “(II) the accrued benefit for peri-
20 ods after the effective date of the
21 amendment of all participants who, as
22 of the effective date of the amend-
23 ment, had attained the age of 40 and
24 had a combined age and years of serv-
25 ice under the plan of not less than 55

1 shall be determined under either of
2 the methods described in clause (iii)
3 which is selected by the plan and
4 which is specified in the amendment.

5 “(iii) APPLICABLE METHOD.—For
6 purposes of clause (ii)(II), the plan shall
7 select 1 of the following methods:

8 “(I) The accrued benefit shall be
9 equal to the greater of the accrued
10 benefit determined under the terms of
11 the plan as in effect both before and
12 after the amendment.

13 “(II) At the election of the par-
14 ticipant, the accrued benefit shall be
15 determined under the terms of the
16 plan as in effect either before or after
17 the amendment.

18 “(C) GREATER OF OLD OR NEW OR ELEC-
19 TION OF EITHER.—The accrued benefit deter-
20 mined under this subparagraph is the accrued
21 benefit determined under 1 of the following
22 methods which is selected by the plan and
23 which is specified in the amendment:

24 “(i) The accrued benefit shall be equal
25 to the greater of the accrued benefit deter-

1 mined under the terms of the plan as in ef-
2 fect both before and after the amendment.

3 “(ii) At the election of the participant,
4 the accrued benefit shall be determined
5 under the terms of the plan as in effect ei-
6 ther before or after the amendment.

7 “(D) METHOD PRESCRIBED BY SEC-
8 RETARY.—The accrued benefit determined
9 under this subparagraph shall be determined
10 under regulations prescribed by the Secretary
11 which require a plan to provide a credit of addi-
12 tional amounts or increases in initial account
13 balances in amounts substantially equivalent to
14 the benefits that would be required to be pro-
15 vided to meet the requirements of subpara-
16 graphs (B) or (C).

17 “(E) INCLUSION OF PRIOR ACCRUED BEN-
18 EFIT INTO INITIAL ACCOUNT BALANCE.—

19 “(i) IN GENERAL.—If, for purposes of
20 subparagraphs (B), (C), or (D), an appli-
21 cable plan amendment provides that an
22 amount will be initially credited to a par-
23 ticipant’s accumulation account (or its
24 equivalent) on the effective date of the
25 amendment with respect to the partici-

1 pant’s accrued benefit for periods before
2 such date, the requirements of such sub-
3 paragraph shall be treated as met with re-
4 spect to such accrued benefit if the amount
5 initially credited is not less than the
6 present value of the participant’s accrued
7 benefit determined by using the applicable
8 mortality table and the applicable interest
9 rate under section 205(g)(3)(A) as of such
10 date.

11 “(ii) ADJUSTMENTS FOR CERTAIN
12 SUBSIDIZED BENEFITS.—For purposes of
13 subparagraph (B), if any early retirement
14 benefit or retirement-type subsidy (within
15 the meaning of paragraph (6)(B)(i)) is not
16 included in the initial account balance
17 under clause (i), the plan shall credit the
18 accumulation account with the amount of
19 such benefit or subsidy for the plan year in
20 which the participant retires if, as of such
21 time, the participant has met the age,
22 years of service, and other requirements
23 under the plan for entitlement to such ben-
24 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 of the
13 Treasury)—

14 “(I) by which the participant
15 may project benefits under the for-
16 mulas from which the participant may
17 choose and may model the impact of
18 any such choice, and

19 “(II) with respect to cir-
20 cumstances under which a participant
21 may not receive the projected accrued
22 benefits by reason of a plan termi-
23 nation or otherwise.

24 “(ii) SIGNIFICANT REDUCTION OF
25 RATE OF ACCRUAL.—The plan shall pro-

1 vide that if, during any of the first 5 plan
2 years during which such an election is in
3 effect, the plan adopts an amendment
4 which results in a significant reduction in
5 the rate of future benefit accrual (within
6 the meaning of section 204(h)), the ac-
7 crued benefit of the participant shall be de-
8 termined as if the participant had made
9 the election which resulted in the greatest
10 accrued benefit.

11 “(iii) BENEFITS MUST NOT BE CON-
12 TINGENT ON ELECTION.—The plan shall
13 not be treated as meeting the requirements
14 of either such subparagraph if any other
15 benefit is conditioned (directly or indi-
16 rectly) on such election.

17 “(G) APPLICABLE PLAN AMENDMENT.—

18 For purposes of this paragraph—

19 “(i) IN GENERAL.—The term ‘applica-
20 ble plan amendment’ means an amendment
21 to a defined benefit plan which has the ef-
22 fect of converting the plan to a cash bal-
23 ance plan.

24 “(ii) SPECIAL RULE FOR COORDI-
25 NATED BENEFITS.—If the benefits of 2 or

1 more defined benefit plans established or
2 maintained by an employer are coordinated
3 in such a manner as to have the effect of
4 the adoption of an amendment described in
5 clause (i), the sponsor of the defined ben-
6 efit plan or plans providing for such co-
7 ordination shall be treated as having
8 adopted such a plan amendment as of the
9 date such coordination begins.

10 “(iii) MULTIPLE AMENDMENTS.—The
11 Secretary of the Treasury shall issue regu-
12 lations to prevent the avoidance of the pur-
13 poses of this paragraph through the use of
14 2 or more plan amendments rather than a
15 single amendment.

16 “(iv) CASH BALANCE PLAN.—For pur-
17 poses of this paragraph, the term ‘cash
18 balance plan’ has the meaning given such
19 term by subsection (b)(5)(C).

20 “(v) COORDINATION WITH ACCRUAL
21 RULES.—If a plan amendment is treated
22 as meeting the requirements of this para-
23 graph with respect to any participant be-
24 cause such participant is eligible to con-
25 tinue to accrue benefits in the same man-

1 ner as under the terms of the plan in ef-
2 fect before the amendment, the Secretary
3 of the Treasury shall prescribe regulations
4 under which the plan shall not be treated
5 as failing to meet the requirements of sub-
6 paragraph (A), (B), or (C) of section
7 204(b)(1) if the requirements of this para-
8 graph are met.”.

9 (2) AMENDMENT OF INTERNAL REVENUE
10 CODE.—Section 411(d) of the Internal Revenue
11 Code of 1986 (relating to special rules) is amended
12 by adding at the end the following new paragraph:

13 “(7) TREATMENT OF CONVERSIONS TO CASH
14 BALANCE OR OTHER HYBRID PLANS.—

15 “(A) IN GENERAL.—For purposes of para-
16 graph (6)(A), an applicable plan amendment
17 shall be treated as reducing the accrued benefit
18 of a participant if, under the terms of the plan
19 as in effect after the amendment, the accrued
20 benefit of any participant who was a participant
21 as of the effective date of the amendment may
22 at any time be less than the accrued benefit de-
23 termined under the method under subparagraph
24 (B), (C), or (D) which is specified in the plan
25 and applies uniformly to all participants. An

1 applicable plan amendment shall in no event be
2 treated as meeting the requirements of any
3 such subparagraph if the conversion described
4 in subparagraph (G)(i) is into a cash balance
5 plan other than a qualified cash balance plan
6 (as defined in subsection (b)(5)(B)).

7 “(B) NO WEARAWAY.—

8 “(i) IN GENERAL.—The accrued ben-
9 efit determined under this subparagraph is
10 the sum of—

11 “(I) the participant’s accrued
12 benefit for years of service before the
13 effective date of the amendment, de-
14 termined under the terms of the plan
15 as in effect before the amendment,
16 plus

17 “(II) except as provided in clause
18 (ii), the participant’s accrued benefit
19 for years of service after the effective
20 date of the amendment, determined
21 under the terms of the plan as in ef-
22 fect after the amendment.

23 A similar rule shall apply in the case of
24 any early retirement benefit or retirement-

1 type subsidy (within the meaning of section
2 411(d)(6)(B)(i)).

3 “(ii) REQUIRED AMOUNTS FOR CER-
4 TAIN PERIODS.—Notwithstanding clause
5 (i)(II), the plan shall provide that either—

6 “(I) the accrued benefit of all
7 participants for each of the first 5
8 plan years to which the amendment
9 applies shall be equal to the greater of
10 the accrued benefit determined under
11 the terms of the plan as in effect both
12 before and after the amendment, or

13 “(II) the accrued benefit for peri-
14 ods after the effective date of the
15 amendment of all participants who, as
16 of the effective date of the amend-
17 ment, had attained the age of 40 and
18 had a combined age and years of serv-
19 ice under the plan of not less than 55
20 shall be determined under either of
21 the methods described in clause (iii)
22 which is selected by the plan and
23 which is specified in the amendment.

1 “(iii) APPLICABLE METHOD.—For
2 purposes of clause (ii)(II), the plan shall
3 select 1 of the following methods:

4 “(I) The accrued benefit shall be
5 equal to the greater of the accrued
6 benefit determined under the terms of
7 the plan as in effect both before and
8 after the amendment.

9 “(II) At the election of the par-
10 ticipant, the accrued benefit shall be
11 determined under the terms of the
12 plan as in effect either before or after
13 the amendment.

14 “(C) GREATER OF OLD OR NEW OR ELEC-
15 TION OF EITHER.—The accrued benefit deter-
16 mined under this subparagraph is the accrued
17 benefit determined under 1 of the following
18 methods which is selected by the plan and
19 which is specified in the amendment:

20 “(i) The accrued benefit shall be equal
21 to the greater of the accrued benefit deter-
22 mined under the terms of the plan as in ef-
23 fect both before and after the amendment.

24 “(ii) At the election of the participant,
25 the accrued benefit shall be determined

1 under the terms of the plan as in effect ei-
2 ther before or after the amendment.

3 “(D) METHOD PRESCRIBED BY SEC-
4 RETARY.—The accrued benefit determined
5 under this subparagraph shall be determined
6 under regulations prescribed by the Secretary
7 which require a plan to provide a credit of addi-
8 tional amounts or increases in initial account
9 balances in amounts substantially equivalent to
10 the benefits that would be required to be pro-
11 vided to meet the requirements of subpara-
12 graphs (B) or (C).

13 “(E) INCLUSION OF PRIOR ACCRUED BEN-
14 EFIT INTO INITIAL ACCOUNT BALANCE.—

15 “(i) IN GENERAL.—If, for purposes of
16 subparagraphs (B), (C), or (D), an appli-
17 cable plan amendment provides that an
18 amount will be initially credited to a par-
19 ticipant’s accumulation account (or its
20 equivalent) on the effective date of the
21 amendment with respect to the partici-
22 pant’s accrued benefit for periods before
23 such date, the requirements of such sub-
24 paragraph shall be treated as met with re-
25 spect to such accrued benefit if the amount

1 initially credited is not less than the
2 present value of the participant's accrued
3 benefit determined by using the applicable
4 mortality table and the applicable interest
5 rate under section 417(e)(3)(A) as of such
6 date.

7 “(ii) ADJUSTMENTS FOR CERTAIN
8 SUBSIDIZED BENEFITS.—For purposes of
9 subparagraph (B), if any early retirement
10 benefit or retirement-type subsidy (within
11 the meaning of paragraph (6)(B)(i)) is not
12 included in the initial account balance
13 under clause (i), the plan shall credit the
14 accumulation account with the amount of
15 such benefit or subsidy for the plan year in
16 which the participant retires if, as of such
17 time, the participant has met the age,
18 years of service, and other requirements
19 under the plan for entitlement to such ben-
20 efit or subsidy.

21 “(F) REQUIREMENTS WHERE PARTICIPANT
22 OFFERED CHOICE.—If a plan provides a partici-
23 pant with an election described in subparagraph
24 (B)(iii)(II) or (C)(ii), the following rules shall
25 apply:

1 “(i) NOTICE.—The plan shall not be
2 treated as meeting the requirements of ei-
3 ther such subparagraph unless the plan
4 provides the participant a notice of the
5 right to make such election which includes
6 information (meeting such requirements as
7 may be prescribed by the Secretary)—

8 “(I) by which the participant
9 may project benefits under the for-
10 mulas from which the participant may
11 choose and may model the impact of
12 any such choice, and

13 “(II) with respect to cir-
14 cumstances under which a participant
15 may not receive the projected accrued
16 benefits by reason of a plan termi-
17 nation or otherwise.

18 “(ii) SIGNIFICANT REDUCTION OF
19 RATE OF ACCRUAL.—The plan shall pro-
20 vide that if, during any of the first 5 plan
21 years during which such an election is in
22 effect, the plan adopts an amendment
23 which results in a significant reduction in
24 the rate of future benefit accrual (within
25 the meaning of section 4980F(e)), the ac-

1 crued benefit of the participant shall be de-
2 termined as if the participant had made
3 the election which resulted in the greatest
4 accrued benefit.

5 “(iii) BENEFITS MUST NOT BE CON-
6 TINGENT ON ELECTION.—The plan shall
7 not be treated as meeting the requirements
8 of either such subparagraph if any other
9 benefit is conditioned (directly or indi-
10 rectly) on such election.

11 “(G) APPLICABLE PLAN AMENDMENT.—

12 For purposes of this paragraph—

13 “(i) IN GENERAL.—The term ‘applica-
14 ble plan amendment’ means an amendment
15 to a defined benefit plan which has the ef-
16 fect of converting the plan to a cash bal-
17 ance plan.

18 “(ii) SPECIAL RULE FOR COORDI-
19 NATED BENEFITS.—If the benefits of 2 or
20 more defined benefit plans established or
21 maintained by an employer are coordinated
22 in such a manner as to have the effect of
23 the adoption of an amendment described in
24 clause (i), the sponsor of the defined ben-
25 efit plan or plans providing for such co-

1 ordination shall be treated as having
2 adopted such a plan amendment as of the
3 date such coordination begins.

4 “(iii) MULTIPLE AMENDMENTS.—The
5 Secretary shall issue regulations to prevent
6 the avoidance of the purposes of this para-
7 graph through the use of 2 or more plan
8 amendments rather than a single amend-
9 ment.

10 “(iv) CASH BALANCE PLAN.—For pur-
11 poses of this paragraph, the term ‘cash
12 balance plan’ has the meaning given such
13 term by subsection (b)(5)(C).

14 “(v) COORDINATION WITH ACCRUAL
15 AND NONDISCRIMINATION RULES.—If a
16 plan amendment is treated as meeting the
17 requirements of this paragraph with re-
18 spect to any participant because such par-
19 ticipant is eligible to continue to accrue
20 benefits in the same manner as under the
21 terms of the plan in effect before the
22 amendment, the Secretary shall prescribe
23 regulations under which—

24 “(I) the plan shall not be treated
25 as failing to meet the requirements of

1 subparagraph (A), (B), or (C) of sec-
2 tion 411(b)(1) if the requirements of
3 this paragraph are met, and

4 “**(II)** the plan shall, subject to
5 such terms and conditions as may be
6 provided in such regulations, not be
7 treated as failing to meet the require-
8 ments of section 401(a)(4) merely be-
9 cause the plan provides any accrual or
10 benefit which is required to be pro-
11 vided under subparagraph (B), (C), or
12 (D) or because only participants as of
13 the effective date of the amendment
14 are so eligible, except that this sub-
15 clause shall only apply if the plan met
16 the requirements of section 401(a)(4)
17 under the terms of the plan as in ef-
18 fect before the amendment.”.

19 (c) ASSUMPTIONS USED IN COMPUTING PRESENT
20 VALUE OF ACCRUED BENEFIT.—

21 (1) AMENDMENT OF ERISA.—Section 205(g)(3)
22 of such Act (29 U.S.C. 1055(g)(3)), is amended—

23 (A) by striking “or (B)” in subparagraph
24 (A)(i) and inserting “, (B), or (C)”, and

1 (B) by adding at the end the following new
2 subparagraph:

3 “(C) PRESENT VALUE OF ACCRUED BEN-
4 EFIT UNDER CASH BALANCE PLAN.—Except as
5 provided in regulations, in the case of a quali-
6 fied cash balance plan (as defined in section
7 204(g)(6)(B)), the present value of the accrued
8 benefit of any participant shall, for purposes of
9 paragraphs (1) and (2), be equal to the balance
10 in the participant’s accumulation account (or
11 its equivalent) as of the time the present value
12 determination is being made.”.

13 (2) AMENDMENT OF INTERNAL REVENUE
14 CODE.—Section 417(e)(3) of such Code, is
15 amended—

16 (A) by striking “or (B)” in subparagraph
17 (A)(i) and inserting “, (B), or (C)”, and

18 (B) by adding at the end the following new
19 subparagraph:

20 “(C) PRESENT VALUE OF ACCRUED BEN-
21 EFIT UNDER CASH BALANCE PLAN.—Except as
22 provided in regulations, in the case of a quali-
23 fied cash balance plan (as defined in section
24 411(d)(7)(B)), the present value of the accrued
25 benefit of any participant shall, for purposes of

1 paragraphs (1) and (2), be equal to the balance
2 in the participant's accumulation account (or
3 its equivalent) as of the time the present value
4 determination is being made.”

5 (d) NO INFERENCE.—Nothing in the amendments
6 made by this section shall be construed to infer the proper
7 treatment of cash balance plans or conversions to cash bal-
8 ance plans under sections 204(b)(1)(H) of the Employee
9 Retirement Income Security Act of 1974, 4(i)(1) of the
10 Age Discrimination in Employment Act of 1967, and
11 411(b)(1)(H) of the Internal Revenue Code of 1986, as
12 in effect before such amendments.

13 (e) EFFECTIVE DATES.—

14 (1) AGE DISCRIMINATION AND LUMP-SUM DIS-
15 TRIBUTIONS.—

16 (A) IN GENERAL.—The amendments made
17 by subsections (a) and (c) shall apply to periods
18 after July 31, 2005.

19 (B) VESTING AND INTEREST CREDIT RE-
20 QUIREMENTS.—In the case of a plan in exist-
21 ence on July 31, 2005, the requirements of
22 clauses (ii) and (iii) of section 411(b)(5)(B) of
23 the Internal Revenue Code of 1986, and of
24 clauses (ii) and (iii) of 204(b)(5)(B) of the Em-
25 ployee Retirement Income Security Act of 1974

1 shall, for purposes of applying the amendments
2 made by subsections (a) and (c), apply to years
3 beginning after December 31, 2006, unless the
4 plan sponsor elects the application of such re-
5 quirements for any period after July 31, 2005,
6 and before the first year beginning after De-
7 cember 31, 2006.

8 (C) SPECIAL RULE FOR COLLECTIVELY
9 BARGAINED PLANS.—In the case of a plan
10 maintained pursuant to 1 or more collective
11 bargaining agreements between employee rep-
12 resentatives and 1 or more employers ratified
13 on or before the date of the enactment of this
14 Act, the requirements described in subpara-
15 graph (B) shall, for purposes of applying the
16 amendments made by subsections (a) and (c),
17 not apply to plan years beginning before—

18 (i) the earlier of—

19 (I) the date on which the last of
20 such collective bargaining agreements
21 terminates (determined without re-
22 gard to any extension thereof on or
23 after such date of enactment), or

24 (II) January 1, 2007, or

25 (ii) January 1, 2009.

1 (2) CONVERSIONS.—The amendments made by
2 subsection (b) shall apply to plan amendments
3 adopted after, and taking effect after, July 31,
4 2005.

5 **SEC. 602. APPLICATION OF AGE DISCRIMINATION AND BEN-**
6 **EFIT RULES TO EXISTING PLANS.**

7 (a) TREATMENT OF EXISTING PLANS.—

8 (1) GENERAL RULE.—In the case of a cash bal-
9 ance plan to which this section applies—

10 (A) the plan shall not be treated as vio-
11 lating section 204(b)(1)(H) of the Employee
12 Retirement Income Security Act of 1974, sec-
13 tion 4(i)(1) of the Age Discrimination in Em-
14 ployment Act of 1967, or section 411(b)(1)(H)
15 of the Internal Revenue Code of 1986 during
16 the transition period merely because it may rea-
17 sonably be expected that the period over which
18 interest credits will be made to a participant's
19 accumulation account (or its equivalent) is
20 longer for a younger participant, and

21 (B) if the plan was established pursuant to
22 an applicable plan amendment (as defined in
23 subsection (c)(2)(H)), the plan shall not be
24 treated during the safe harbor period as failing
25 to meet the requirements of sections 204(g)(1)

1 of such Act or section 411(d)(6)(A) of such
2 Code by reason of the adoption of such amend-
3 ment.

4 If subparagraph (B) applies to a plan, the provisions
5 of subparagraph (A) shall not apply to such plan un-
6 less the plan meets the benefit requirements of sub-
7 section (c).

8 (2) PLANS TO WHICH SECTION APPLIES.—

9 (A) IN GENERAL.—This section shall apply
10 to a cash balance plan—

11 (i) which was in existence on July 31,
12 2005,

13 (ii) which is an eligible cash balance
14 plan at all times during the transition pe-
15 riod and, if applicable, the safe harbor pe-
16 riod, and

17 (iii) with respect to which the plan
18 sponsor elects the application of this sec-
19 tion in such manner, and at such time, as
20 the Secretary of the Treasury may pre-
21 scribe.

22 (B) EXCEPTION FOR PENDING ACTIONS.—

23 (i) IN GENERAL.—A plan sponsor of a
24 cash balance plan may not make an elec-
25 tion under subparagraph (A)(iii) with re-

1 spect to the plan if, before August 1, 2005,
2 a claim or action has been filed with an
3 administrative agency or court alleging a
4 violation of any provision of Federal law
5 described in subparagraph (A) or (B) of
6 paragraph (1) in connection with the es-
7 tablishment or operation of the plan.

8 (ii) EXCEPTIONS FOR FINAL AC-
9 TIONS.—Clause (i) shall not apply to any
10 plan if—

11 (I) the claim or action has been
12 dismissed, or

13 (II) there has been a final settle-
14 ment or action with respect to the
15 claim or action.

16 Subclauses (I) and (II) shall only apply if
17 no appeal of the dismissal, settlement, or
18 action is pending and the time for filing of
19 such an appeal has expired.

20 (iii) WAIVER.—Clause (i) shall not
21 apply if, in accordance with such proce-
22 dures as the Secretary of the Treasury
23 may prescribe, all of the parties who filed
24 the claim or action agree to waive the ap-
25 plication of this paragraph.

1 (b) TERMS RELATING TO CASH BALANCE PLANS.—

2 For purposes of this section—

3 (1) ELIGIBLE CASH BALANCE PLAN.—The term
4 “eligible cash balance plan” means a cash balance
5 plan under which the rate of any pay credit or inter-
6 est credit under the plan to a participant’s accumu-
7 lation account (or its equivalent) does not decrease
8 by reason of the participant’s attainment of any age.

9 (2) CASH BALANCE PLAN.—The term “cash
10 balance plan” means a defined benefit plan under
11 which—

12 (A) the accrued benefit is determined by
13 reference to the balance of a hypothetical accu-
14 mulation account, and

15 (B) pay credits and interest credits are
16 credited to such account.

17 (3) REGULATIONS TO INCLUDE SIMILAR OR
18 OTHER HYBRID PLANS.—The Secretary of the
19 Treasury shall issue regulations which include in the
20 definition of cash balance plan any defined benefit
21 plan (or any portion of such a plan) which has an
22 effect similar to a cash balance plan. Such regula-
23 tions may provide that if a plan sponsor represents
24 in communications to participants and beneficiaries
25 that a plan amendment results in a plan being de-

1 scribed in the preceding sentence, such plan shall be
2 treated as a cash balance plan.

3 (4) TRANSITION PERIOD.—The term “transi-
4 tion period” means, with respect to any cash balance
5 plan, the period beginning on the effective date of
6 the cash balance plan and ending on the date on
7 which the amendments made by section 601(a) of
8 this Act apply to such plan.

9 (5) SAFE HARBOR PERIOD.—The term “safe
10 harbor period” means, with respect to any cash bal-
11 ance plan, the period beginning on the effective date
12 of the applicable plan amendment (as defined in sub-
13 section (c)(2)(H)) and ending on—

14 (A) in the case of a plan which meets the
15 requirements described in subparagraph (A) or
16 (B) of subsection (c)(1), the date on which the
17 plan ceases to meet such requirements, and

18 (B) in the case of a plan which meets the
19 requirements described in subsection (c)(1)(C),
20 the date after the adoption of a safe harbor
21 amendment described in such subsection on
22 which the plan ceases to meet the benefit re-
23 quirements described in subsection (c)(2).

24 (c) RULES APPLICABLE TO BENEFITS UNDER CON-
25 VERTED PLANS.—

1 (1) IN GENERAL.—The plan meets the require-
2 ments of this subsection if—

3 (A) the requirements of sections 204(g)(6)
4 of the Employee Retirement Income Security
5 Act of 1974 or 411(d)(7) of the Internal Rev-
6 enue Code of 1986 (as added by section 601)
7 were met at all times during the period begin-
8 ning on the effective date of the applicable plan
9 amendment with respect to such plan and end-
10 ing on July 31, 2005,

11 (B) the requirements of paragraph (2)
12 were met at all times during the period begin-
13 ning on the effective date of the applicable plan
14 amendment with respect to such plan and end-
15 ing on July 31, 2005, or

16 (C) the plan is amended to meet the re-
17 quirements described in subparagraph (A) or
18 (B) and, under such procedures and in such
19 manner as the Secretary of the Treasury may
20 prescribe by regulations, the account (or its
21 equivalent) of each participant is, not later than
22 3 years after the date such regulations become
23 final, appropriately adjusted to reflect any in-
24 crease in pay and interest credits which would
25 have been made to the account (or its equiva-

1 as of the effective date of the applicable
2 plan amendment may not at any time be
3 less than the accrued benefit determined
4 under the 1 of the following methods which
5 is specified in the plan and applies uni-
6 formly to all participants:

7 (I) A method under subpara-
8 graph (B), (C), (D), or (E).

9 (II) A method under subpara-
10 graph (B), (C), or (D) of section
11 204(g)(6) of the Employee Retirement
12 Income Security Act of 1974 (as
13 added by section 601).

14 (B) NO WEARAWAY OF NORMAL AND
15 EARLY RETIREMENT BENEFIT.—

16 (i) IN GENERAL.—The accrued benefit
17 determined under this subparagraph is the
18 sum of—

19 (I) the participant's accrued ben-
20 efit for years of service before the ef-
21 fective date of the applicable plan
22 amendment, determined under the
23 terms of the plan as in effect before
24 the applicable plan amendment, plus

1 (II) except as provided in clause
2 (ii), the participant's accrued benefit
3 for years of service after the effective
4 date of the applicable plan amend-
5 ment, determined under the terms of
6 the plan as in effect after the applica-
7 ble plan amendment.

8 A similar rule shall apply in the case of
9 any early retirement benefit or retirement-
10 type subsidy (within the meaning of section
11 204(g)(2)(A)) of the Employee Retirement
12 Income Security Act of 1974.

13 (ii) REQUIRED AMOUNTS FOR CER-
14 TAIN PERIODS.—Notwithstanding clause
15 (i)(II), the plan shall provide that either—

16 (I) the accrued benefit of all par-
17 ticipants for each of the first 5 plan
18 years to which the applicable plan
19 amendment applies shall be equal to
20 the greater of the accrued benefit de-
21 termined under the terms of the plan
22 as in effect both before and after the
23 applicable plan amendment, or

24 (II) the accrued benefit for peri-
25 ods after the effective date of the ap-

1 applicable plan amendment of all partici-
2 pants who, as of the effective date of
3 the amendment, had attained the age
4 of 40 and had a combined age and
5 years of service under the plan of not
6 less than 65 shall be determined
7 under either of the methods described
8 in clause (iii) which is selected by the
9 plan and which is specified in the
10 amendment.

11 This clause shall not apply to any conver-
12 sion if the Secretary of the Treasury or his
13 delegate has issued a written determination
14 letter which has the effect of treating the
15 conversion as in compliance with applicable
16 laws and regulations.

17 (iii) APPLICABLE METHOD.—For pur-
18 poses of clause (ii)(II), the plan shall select
19 1 of the following methods:

20 (I) The accrued benefit shall be
21 equal to the greater of the accrued
22 benefit determined under the terms of
23 the plan as in effect both before and
24 after the applicable plan amendment.

1 (II) At the election of the partici-
2 pant, the accrued benefit shall be de-
3 termined under the terms of the plan
4 as in effect either before or after the
5 applicable plan amendment.

6 (C) NO WEARWAY OF NORMAL RETIRE-
7 MENT BENEFIT.—

8 (i) IN GENERAL.—The accrued benefit
9 determined under this subparagraph is the
10 sum of—

11 (I) the participant's accrued ben-
12 efit for years of service before the ef-
13 fective date of the applicable plan
14 amendment, determined under the
15 terms of the plan as in effect before
16 the applicable plan amendment, plus

17 (II) except as provided in clause
18 (ii), the participant's accrued benefit
19 for years of service after the effective
20 date of the applicable plan amend-
21 ment, determined under the terms of
22 the plan as in effect after the applica-
23 ble plan amendment.

1 (ii) REQUIRED AMOUNTS FOR CER-
2 TAIN PERIODS.—Notwithstanding clause
3 (i)(II), the plan shall provide that either—
4 (I) the accrued benefit of all par-
5 ticipants who, as of the effective date
6 of the applicable plan amendment,
7 had attained the age of 40 shall be
8 equal to the accrued benefit deter-
9 mined under the terms of the plan as
10 in effect before the applicable plan
11 amendment, or
12 (II) the accrued benefit for peri-
13 ods after the effective date of the ap-
14 plicable plan amendment of all partici-
15 pants who, as of the effective date of
16 the applicable plan amendment, had
17 attained the age of 40 and had a com-
18 bined age and years of service under
19 the plan of not less than 60 shall be
20 determined under either of the meth-
21 ods described in clause (iii) which is
22 selected by the plan and which is
23 specified in the amendment.
24 This clause shall not apply to any conver-
25 sion if the Secretary of the Treasury or his

1 delegate determines that the conversion
2 was pursuant to 1 or more collective bar-
3 gaining agreements between employee rep-
4 resentatives and 1 or more plan sponsors
5 or that the conversion was from a defined
6 benefit plan which (at all times before the
7 conversion, including any period for which
8 a predecessor plan was in effect) was a ca-
9 reer-average pay plan.

10 (iii) APPLICABLE METHOD.—For pur-
11 poses of clause (ii)(II), the plan shall select
12 1 of the following methods:

13 (I) The accrued benefit shall be
14 equal to the greater of the accrued
15 benefit determined under the terms of
16 the plan as in effect both before and
17 after the applicable plan amendment.

18 (II) At the election of the partici-
19 pant, the accrued benefit shall be de-
20 termined under the terms of the plan
21 as in effect either before or after the
22 applicable plan amendment.

23 (D) INFORMED CHOICE.—The accrued
24 benefit for periods after the effective date of the
25 applicable plan amendment determined under

1 this subparagraph shall, at the election of the
2 participant, be the accrued benefit determined
3 under the terms of the plan as in effect either
4 before or after the applicable plan amendment

5 (E) METHOD PRESCRIBED BY SEC-
6 RETARY.—The accrued benefit determined
7 under this subparagraph shall be determined
8 under regulations prescribed by the Secretary of
9 the Treasury which require a plan to provide a
10 credit of additional amounts or increases in ini-
11 tial account balances in amounts substantially
12 equivalent to the benefits that would be re-
13 quired to be provided to meet the requirements
14 of subparagraphs (B) or (C).

15 (F) INCLUSION OF PRIOR ACCRUED BEN-
16 EFIT INTO INITIAL ACCOUNT BALANCE.—

17 (i) IN GENERAL.—If, for purposes of
18 subparagraphs (B), (C), (D), or (E), a safe
19 harbor amendment provides that an
20 amount will be initially credited to a par-
21 ticipant's accumulation account (or its
22 equivalent) on the effective date of the
23 amendment with respect to the partici-
24 pant's accrued benefit for periods before
25 such date, the requirements of such sub-

1 paragraph shall be treated as met with re-
2 spect to such accrued benefit if the amount
3 initially credited is not less than the
4 present value of the participant's accrued
5 benefit determined by using the applicable
6 mortality table and the applicable interest
7 rate under section 205(g)(3)(A) of the
8 Employee Retirement Income Security Act
9 as of such date.

10 (ii) ADJUSTMENTS FOR CERTAIN SUB-
11 SIDIZED BENEFITS.—For purposes of sub-
12 paragraph (B), if any early retirement ben-
13 efit or retirement-type subsidy (within the
14 meaning of section 205(g)(1)(B)(i)) is not
15 included in the initial account balance
16 under clause (i), the plan shall credit the
17 accumulation account with the amount of
18 such benefit or subsidy for the plan year in
19 which the participant retires if, as of such
20 time, the participant has met the age,
21 years of service, and other requirements
22 under the plan for entitlement to such ben-
23 efit or subsidy.

24 (G) REQUIREMENTS WHERE PARTICIPANT
25 OFFERED CHOICE.—If a plan provides a partici-

1 pant with an election described in subparagraph
2 (B)(iii)(II), (C)(iii)(II), or (D), the following
3 rules shall apply:

4 (i) NOTICE.—The plan shall not be
5 treated as meeting the requirements of
6 such subparagraph unless the plan pro-
7 vides the participant a notice of the right
8 to make such election which includes
9 information—

10 (I) by which the participant may
11 calculate the difference between the
12 formulas from which the participant
13 may elect and which, at the election of
14 the plan sponsor, may include exam-
15 ples, estimates of relative value, com-
16 parisons, or projections of benefits,
17 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) ACTIONS BY PLAN SPONSOR PRO-
24 HIBITED.—Any information provided in
25 the notice under clause (i) shall be free of

1 undue influence from the plan sponsor (or
2 its agents or affiliates) and shall not be
3 materially false or misleading.

4 (iii) FORM OF NOTICE.—The notice
5 provided under clause (i) shall be in a form
6 which is understandable to the average
7 plan participant and which meets such re-
8 quirements as the Secretary of the Treas-
9 ury may prescribe.

10 (iv) SIGNIFICANT REDUCTION OF
11 RATE OF ACCRUAL.—The plan shall pro-
12 vide that if, during any of the first 5 plan
13 years during which such an election is in
14 effect, the plan adopts an amendment
15 which results in a significant reduction in
16 the rate of future benefit accrual (within
17 the meaning of section 204(h) of such
18 Act), the accrued benefit of the participant
19 shall be determined as if the participant
20 had made the election which resulted in
21 the greatest accrued benefit.

22 (v) BENEFITS MUST NOT BE CONTIN-
23 GENT ON ELECTION.—The plan shall not
24 be treated as meeting the requirements of
25 any such subparagraph if any other benefit

1 is conditioned (directly or indirectly) on
2 such election.

3 (vi) SPECIAL RULE FOR PRIOR AC-
4 TIONS.—For purposes of determining
5 whether the requirements of paragraph
6 (1)(B) are met with to any participant who
7 was allowed to make an election for any
8 period before the date of the enactment of
9 this Act—

10 (I) the requirements of clause
11 (i)(II) shall not apply, and

12 (II) a plan shall not be treated as
13 violating the requirements of clause
14 (v) unless it conditioned the election
15 in a manner prohibited under the reg-
16 ulations prescribed under paragraph
17 (1)(C).

18 (H) APPLICABLE PLAN AMENDMENT.—For
19 purposes of this paragraph—

20 (i) IN GENERAL.—The term “applica-
21 ble plan amendment” means an amend-
22 ment to a defined benefit plan which has
23 the effect of converting the plan to a cash
24 balance plan.

1 (ii) SPECIAL RULE FOR COORDINATED
2 BENEFITS.—If the benefits of 2 or more
3 defined benefit plans established or main-
4 tained by an employer are coordinated in
5 such a manner as to have the effect of the
6 adoption of an amendment described in
7 clause (i), the sponsor of the defined ben-
8 efit plan or plans providing for such co-
9 ordination shall be treated as having
10 adopted such a plan amendment as of the
11 date such coordination begins.

12 (iii) COORDINATION WITH ACCRUAL
13 RULES.—If a plan amendment is treated
14 as meeting the requirements of this para-
15 graph with respect to any participant be-
16 cause such participant is eligible to con-
17 tinue to accrue benefits in the same man-
18 ner as under the terms of the plan in ef-
19 fect before the amendment, the Secretary
20 of the Treasury shall prescribe regulations
21 under which—

22 (I) the plan shall not be treated
23 as failing to meet the requirements of
24 subparagraph (A), (B), or (C) of sec-
25 tion 204(b)(1) of such Act or sub-

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1 paragraph (A), (B), or (C) of section
2 411(b)(1) of such Code if the require-
3 ments of this paragraph are met and
4 (II) the plan shall, subject to
5 such terms and conditions as may be
6 provided in such regulations, not be
7 treated as failing to meet the require-
8 ments of section 401(a)(4) of the In-
9 ternal Revenue Code of 1986 merely
10 because the plan provides any accrual
11 or benefit which is required to be pro-
12 vided under subparagraph (B), (C),
13 (D), or (E) or because only partici-
14 pants as of the effective date of the
15 amendment are so eligible, except that
16 this subclause shall only apply if the
17 plan met the requirements of section
18 401(a)(4) of such Code under the
19 terms of the plan as in effect before
20 the amendment.

21 (iv) COORDINATION WITH AGE DIS-
22 CRIMINATION RULES.—Except as provided
23 in regulations prescribed by the Secretary
24 of the Treasury, if, pursuant to a safe har-
25 bor amendment or an applicable plan

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—AUTHORITY TO**
6 **POSTPONE CERTAIN DEADLINES**

7 **SEC. 701. AUTHORITY TO THE SECRETARY OF LABOR, SEC-**
8 **RETARY OF THE TREASURY, AND THE PEN-**
9 **SION BENEFIT GUARANTY CORPORATION.**

10 The Secretary of Labor, the Secretary of the Treas-
11 ury, and the Executive Director of the Pension Benefit
12 Guaranty Corporation shall exercise their authority under
13 section 518 of the Employee Retirement Income Security
14 Act of 1974 (29 U.S.C. 1148) and section 7508A of the
15 Internal Revenue Code of 1986 to postpone certain dead-
16 lines by reason of the Presidentially declared disaster
17 areas in Louisiana, Mississippi, Alabama, and elsewhere,
18 due to the effect of Hurricane Katrina. The Secretaries
19 and the Executive Director of the Corporation shall issue
20 guidance as soon as is practicable to plan sponsors and
21 participants regarding extension of deadlines and rules ap-
22 plicable to these extraordinary circumstances. Nothing in
23 this section shall be construed to relieve any plan sponsor
24 from any requirement to pay benefits or make contribu-
25 tions under the plan of the sponsor.

1 (B) on or before the last day of the first
2 plan year beginning on or after January 1,
3 2007, or such later date as the Secretary of the
4 Treasury may prescribe.

5 In the case of a governmental plan (as defined in
6 section 414(d) of the Internal Revenue Code of
7 1986), subparagraph (B) shall be applied by sub-
8 stituting the date which is 2 years after the date
9 otherwise applied under subparagraph (B).

10 (2) CONDITIONS.—This section shall not apply
11 to any amendment unless—

12 (A) during the period—

13 (i) beginning on the date the legisla-
14 tive or regulatory amendment described in
15 paragraph (1)(A) takes effect (or in the
16 case of a plan or contract amendment not
17 required by such legislative or regulatory
18 amendment, the effective date specified by
19 the plan), and

20 (ii) ending on the date described in
21 paragraph (1)(B) (or, if earlier, the date
22 the plan or contract amendment is adopt-
23 ed),

24 the plan or contract is operated as if such plan
25 or contract amendment were in effect; and

- 1 (B) such plan or contract amendment ap-
- 2 plies retroactively for such period.