

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2830
OFFERED BY MR. THOMAS OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

Sec. 1. Short title and table of contents.

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

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

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

Subtitle C—Other provisions

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

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



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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

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

TITLE III—OTHER PROVISIONS

- Sec. 301. Interest rate for 2006 funding requirements.
- Sec. 302. Interest rate assumption for determination of lump sum distributions.
- Sec. 303. Interest rate assumption for applying benefit limitations to lump sum distributions.
- Sec. 304. Distributions during working retirement.
- Sec. 305. Other amendments relating to prohibited transactions.
- Sec. 306. Correction period for certain transactions involving securities and commodities.
- Sec. 307. Government Accountability Office pension funding report.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

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

TITLE VI—INVESTMENT ADVICE

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

TITLE VII—BENEFIT ACCRUAL STANDARDS

- Sec. 701. Improvements in benefit accrual standards.

TITLE VIII—DEDUCTION LIMITATIONS

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

TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED
CONTRIBUTION PLANS



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

TITLE X—PROVISIONS TO ENHANCE HEALTH CARE
AFFORDABILITY

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

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

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

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

9 [See section 101 of the bill as reported by the Com-
 10 mittee on Education and the Workforce.]

11 **SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DE-**
 12 **FINED BENEFIT PENSION PLANS.**

13 [See section 102 of the bill as reported by the Com-
 14 mittee on Education and the Workforce.]



1 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EM-**
2 **PLOYER PLANS.**

3 [See section 103 of the bill as reported by the Com-
4 mittee on Education and the Workforce.]

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

6 [See section 104 of the bill as reported by the Com-
7 mittee on Education and the Workforce.]

8 **Subtitle B—Amendments to**
9 **Internal Revenue Code of 1986**

10 **SEC. 111. MINIMUM FUNDING STANDARDS.**

11 (a) NEW MINIMUM FUNDING STANDARDS.—Section
12 412 of the Internal Revenue Code of 1986 (relating to
13 minimum funding standards) is amended to read as fol-
14 lows:

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

16 **“(a) REQUIREMENT TO MEET MINIMUM FUNDING**
17 **STANDARD.—**

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

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

25 **“(A) in the case of a defined benefit plan**
26 **which is not a multiemployer plan, the employer**



1 makes contributions to or under the plan for
2 the plan year which, in the aggregate, are not
3 less than the minimum required contribution
4 determined under section 430 for the plan for
5 the plan year,

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

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

18 “(b) LIABILITY FOR CONTRIBUTIONS.—

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



1 “(2) JOINT AND SEVERAL LIABILITY WHERE
2 EMPLOYER MEMBER OF CONTROLLED GROUP.—In
3 the case of a defined benefit plan which is not a
4 multiemployer plan, if the employer referred to in
5 paragraph (1) is a member of a controlled group,
6 each member of such group shall be jointly and sev-
7 erally liable for payment of such contributions.

8 “(c) VARIANCE FROM MINIMUM FUNDING STAND-
9 ARDS.—

10 “(1) WAIVER IN CASE OF BUSINESS HARD-
11 SHIP.—

12 “(A) IN GENERAL.—If—

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

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

24 the Secretary may, subject to subparagraph
25 (C), waive the requirements of subsection (a)



1 for such year with respect to all or any portion
2 of the minimum funding standard. The Sec-
3 retary shall not waive the minimum funding
4 standard with respect to a plan for more than
5 3 of any 15 (5 of any 15 in the case of a multi-
6 employer plan) consecutive plan years.

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

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

17 “(ii) in the case of a multiemployer
18 plan, the funding standard account shall
19 be credited under section 431(b)(3)(C)
20 with the amount of the waived funding de-
21 ficiency and such amount shall be amor-
22 tized as required under section
23 431(b)(2)(C).

24 “(C) WAIVER OF AMORTIZED PORTION
25 NOT ALLOWED.—The Secretary may not waive



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

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

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

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

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

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

23 “(3) WAIVED FUNDING DEFICIENCY.—For pur-
24 poses of this section and part III of this subchapter,
25 the term ‘waived funding deficiency’ means the por-



1 tion of the minimum funding standard under sub-
2 section (a) (determined without regard to the waiv-
3 er) for a plan year waived by the Secretary and not
4 satisfied by employer contributions.

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

7 “(A) SECURITY MAY BE REQUIRED.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in subparagraph (C), the Secretary
10 may require an employer maintaining a de-
11 fined benefit plan which is not a multiem-
12 ployer plan to provide security to such plan
13 as a condition for granting or modifying a
14 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) of the Employee Retirement
22 Income Security Act of 1974), or a mem-
23 ber of such sponsor’s controlled group
24 (within the meaning of section 4001(a)(14)
25 of such Act).



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

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

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

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

15 “(ii) consider—

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

18 “(II) any views of any employee
19 organization (within the meaning of
20 section 3(4) of the Employee Retirement
21 Income Security Act of 1974)
22 representing participants in the plan
23 which are submitted in writing to the
24 Secretary in connection with such ap-
25 plication.



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

6 “(C) EXCEPTION FOR CERTAIN WAIV-
7 ERS.—

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

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

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

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

23 “(ii) TREATMENT OF WAIVERS FOR
24 WHICH APPLICATIONS ARE PENDING.—The
25 amount described in clause (i)(I) shall in-



1 clude any increase in such amount which
2 would result if all applications for waivers
3 of the minimum funding standard under
4 this subsection which are pending with re-
5 spect to such plan were denied.

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

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

18 “(B) SPECIAL RULE IF EMPLOYER IS MEM-
19 BER OF CONTROLLED GROUP.—In the case of a
20 defined benefit plan which is not a multiem-
21 ployer plan, if an employer is a member of a
22 controlled group, the temporary substantial
23 business hardship requirements of paragraph
24 (1) shall be treated as met only if such require-
25 ments 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 the Secretary that the applicant has
19 provided notice of the filing of the application
20 for such waiver to to each affected party (as de-
21 fined in section 4001(a)(21) of the Employee
22 Retirement Income Security Act of 1974). Such
23 notice shall include a description of the extent
24 to which the plan is funded for benefits which



1 are guaranteed under title IV and for benefit li-
2 abilities.

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

8 “(7) RESTRICTION ON PLAN AMENDMENTS.—

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



1 “(B) EXCEPTION.—Paragraph (1) shall
2 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 (d)(2), or

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

12 “(d) MISCELLANEOUS RULES.—

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

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

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



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

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

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



1 tion period under section 431(d)) is unavailable or
2 inadequate.

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

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

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

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

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

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

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

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

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



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

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

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

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

18 “(3) CERTAIN INSURANCE CONTRACT PLANS.—

19 A plan is described in this paragraph if—

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

4 “(c) SHORTFALL AMORTIZATION CHARGE.—

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

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



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

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

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

9 “(B) the sum of—

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

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



1 which have been determined with respect
2 to the waiver amortization bases of the
3 plan for each of the 5 plan years preceding
4 such plan year.

5 In any case in which the value of plan assets
6 of the plan (as reduced under subsection
7 (f)(4)(A)) is equal to or greater than the fund-
8 ing target of the plan for the plan year, the
9 shortfall amortization base of the plan for such
10 plan year shall be zero.

11 “(4) FUNDING SHORTFALL.—

12 “(A) IN GENERAL.—For purposes of this
13 section, except as provided in subparagraph
14 (B), the funding shortfall of a plan for any plan
15 year is the excess (if any) of—

16 “(i) the funding target of the plan for
17 the plan year, over

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

22 “(B) TRANSITION RULE.—

23 “(i) IN GENERAL.—For purposes of
24 paragraph (3), in the case of a non-deficit
25 reduction plan, subparagraph (A) shall be



1 applied to plan years beginning after 2006
 2 and before 2011 by substituting for the
 3 amount described in subparagraph (A)(i)
 4 the applicable percentage of the funding
 5 target of the plan for the plan year deter-
 6 mined under the following table:

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

7 “(ii) NON-DEFICIT REDUCTION
 8 PLAN.—For purposes of clause (i), the
 9 term ‘non-deficit reduction plan’ means
 10 any plan—

11 “(I) to which section 412 (as in
 12 effect on the day before the date of
 13 the enactment of the Pension Protec-
 14 tion Act of 2005) applied for the plan
 15 year beginning in 2006, and

16 “(II) to which subsection (l) of
 17 such section (as so in effect) did not
 18 apply for such plan year.

19 “(5) EARLY DEEMED AMORTIZATION UPON AT-
 20 TAINMENT OF FUNDING TARGET.—In any case in
 21 which the funding shortfall of a plan for a plan year



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

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

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

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

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

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

24 “(e) WAIVER AMORTIZATION CHARGE.—



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

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

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

24 “(4) WAIVER AMORTIZATION BASE.—The waiv-
25 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(c).

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) REDUCTION OF MINIMUM REQUIRED CONTRIBU-
11 TION BY PRE-FUNDING BALANCE AND FUNDING STAND-
12 ARD CARRYOVER BALANCE.—

13 “(1) ELECTION TO MAINTAIN BALANCES.—

14 “(A) PRE-FUNDING BALANCE.—The plan
15 sponsor of a defined benefit plan which is not
16 a multiemployer plan may elect to maintain a
17 pre-funding balance.

18 “(B) FUNDING STANDARD CARRYOVER
19 BALANCE.—

20 “(i) IN GENERAL.—In the case of a
21 defined benefit plan (other than a multiem-
22 ployer plan) described in clause (ii), the
23 plan sponsor may elect to maintain a fund-
24 ing standard carryover balance, until such
25 balance is reduced to zero.



1 “(ii) PLANS MAINTAINING FUNDING
2 STANDARD ACCOUNT IN 2006.—A plan is
3 described in this clause if the plan—

4 “(I) was in effect for a plan year
5 beginning in 2006, and

6 “(II) had a positive balance in
7 the funding standard account under
8 section 412(b) as in effect for such
9 plan year and determined as of the
10 end of such plan year.

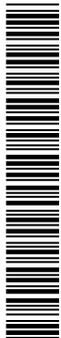
11 “(2) APPLICATION OF BALANCES.—A pre-fund-
12 ing balance and a funding standard carryover bal-
13 ance maintained pursuant to this paragraph—

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

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

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

23 “(3) ELECTION TO APPLY BALANCES AGAINST
24 MINIMUM REQUIRED CONTRIBUTION.—



1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C), in the case of any
3 plan year in which the plan sponsor elects to
4 credit against the minimum required contribu-
5 tion for the current plan year all or a portion
6 of the pre-funding balance or the funding
7 standard carryover balance for the current plan
8 year (not in excess of such minimum required
9 contribution), the minimum required contribu-
10 tion for the plan year shall be reduced by the
11 amount so credited by the plan sponsor. For
12 purposes of the preceding sentence, the min-
13 imum required contribution shall be determined
14 after taking into account any waiver under sec-
15 tion 412(c).

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

23 “(C) LIMITATION FOR UNDERFUNDED
24 PLANS.—The preceding provisions of this para-



1 graph shall not apply for any plan year if the
2 ratio (expressed as a percentage) which—

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

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

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

17 “(A) APPLICABILITY OF SHORTFALL AM-
18 ORTIZATION BASE.—For purposes of subsection
19 (c)(3), the value of plan assets is deemed to be
20 such amount, reduced by the amount of the
21 pre-funding balance, but only if an election
22 under paragraph (2) applying any portion of
23 the pre-funding balance in reducing the min-
24 imum required contribution is in effect for the
25 plan year.



1 “(B) DETERMINATION OF EXCESS ASSETS,
2 FUNDING SHORTFALL, AND FUNDING TARGET
3 ATTAINMENT PERCENTAGE.—For purposes of
4 subsections (a), (c)(4)(A)(ii), and (d)(2)(A), the
5 value of plan assets is deemed to be such
6 amount, reduced by the amount of the pre-
7 funding balance and the funding standard car-
8 ryover balance.

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

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

20 “(A) IN GENERAL.—The plan sponsor may
21 elect to reduce by any amount the balance of
22 the pre-funding balance and the funding stand-
23 ard carryover balance for any plan year (but
24 not below zero). Such reduction shall be effec-
25 tive prior to any determination of the value of



1 plan assets for such plan year under this sec-
2 tion and application of the balance in reducing
3 the minimum required contribution for such
4 plan for such plan year pursuant to an election
5 under paragraph (2).

6 “(B) COORDINATION BETWEEN PRE-FUND-
7 ING BALANCE AND FUNDING STANDARD CARRY-
8 OVER BALANCE.—To the extent that any plan
9 has a funding standard carryover balance great-
10 er than zero, no election may be made under
11 subparagraph (A) with respect to the pre-fund-
12 ing balance.

13 “(6) PRE-FUNDING BALANCE.—

14 “(A) IN GENERAL.—A pre-funding balance
15 maintained by a plan shall consist of a begin-
16 ning balance of zero, increased and decreased to
17 the extent provided in subparagraphs (B) and
18 (C), and adjusted further as provided in para-
19 graph (8).

20 “(B) INCREASES.—As of the valuation
21 date for each plan year beginning after 2007,
22 the pre-funding balance of a plan shall be in-
23 creased by the amount elected by the plan spon-
24 sor for the plan year. Such amount shall not ex-
25 ceed the excess (if any) of—



1 “(i) the aggregate total of employer
2 contributions to the plan for the preceding
3 plan year, over

4 “(ii) the minimum required contribu-
5 tion for such preceding plan year (in-
6 creased by interest on any portion of such
7 minimum required contribution remaining
8 unpaid as of the valuation date for the cur-
9 rent plan year, at the effective interest rate
10 for the plan for the preceding plan year,
11 for the period beginning with the first day
12 of such preceding plan year and ending on
13 the date that payment of such portion is
14 made).

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

19 “(i) the amount of such balance cred-
20 ited under paragraph (2) (if any) in reduc-
21 ing the minimum required contribution of
22 the plan for the preceding plan year, and

23 “(ii) any reduction in such balance
24 elected under paragraph (5).



1 “(7) FUNDING STANDARD CARRYOVER BAL-
2 ANCE.—

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

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

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

17 “(i) the amount of such balance cred-
18 ited under paragraph (2) (if any) in reduc-
19 ing the minimum required contribution of
20 the plan for the preceding plan year, and

21 “(ii) any reduction in such balance
22 elected under paragraph (5).

23 “(8) ADJUSTMENTS TO BALANCES.—In deter-
24 mining the pre-funding balance or the funding
25 standard carryover balance of a plan as of the valu-



1 ation date (before applying any increase or decrease
2 under paragraph (6) or (7)), the plan sponsor shall,
3 in accordance with regulations which shall be pre-
4 scribed by the Secretary, adjust such balance so as
5 to reflect the rate of net gain or loss (determined,
6 notwithstanding subsection (g)(3), on the basis of
7 fair market value) experienced by all plan assets for
8 the period beginning with the valuation date for the
9 preceding plan year and ending with the date pre-
10 ceding the valuation date for the current plan year,
11 properly taking into account, in accordance with
12 such regulations, all contributions, distributions, and
13 other plan payments made during such period.

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

18 “(g) VALUATION OF PLAN ASSETS AND LIABIL-
19 ITIES.—

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



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

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

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

19 “(C) APPLICATION OF CERTAIN RULES IN
20 DETERMINATION OF PLAN SIZE.—For purposes
21 of this paragraph—

22 “(i) PLANS NOT IN EXISTENCE IN
23 PRECEDING YEAR.—In the case of the first
24 plan year of any plan, subparagraph (B)
25 shall apply to such plan by taking into ac-



1 count the number of participants that the
2 plan is reasonably expected to have on
3 days during such first plan year.

4 “(ii) PREDECESSORS.—Any reference
5 in subparagraph (B) to an employer shall
6 include a reference to any predecessor of
7 such employer.

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

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

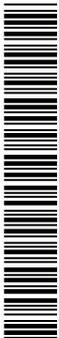
20 “(B) any such method may not result in a
21 determination of the value of plan assets which,
22 at any time, is lower than 90 percent or greater
23 than 110 percent of the fair market value of
24 such assets at such time.



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

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

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



1 date of the plan for such plan year, such value
2 of plan assets shall be reduced for interest on
3 such amount determined using the effective rate
4 of interest of the plan for the current plan year
5 for the period beginning when such payment
6 was made and ending on the valuation date of
7 the plan.

8 “(5) ACCOUNTING FOR PLAN LIABILITIES.—
9 For purposes of this section—

10 “(A) LIABILITIES TAKEN INTO ACCOUNT
11 FOR CURRENT PLAN YEAR.—In determining the
12 value of liabilities under a plan for a plan year,
13 liabilities shall be taken into account to the ex-
14 tent attributable to benefits (including any early
15 retirement or similar benefit) accrued or earned
16 as of the beginning of the plan year.

17 “(B) ACCRUALS DURING CURRENT PLAN
18 YEAR DISREGARDED.—For purposes of sub-
19 paragraph (A), benefits accrued or earned dur-
20 ing such plan year shall not be taken into ac-
21 count, irrespective of whether the valuation date
22 of the plan for such plan year is later than the
23 first day of such plan year.

24 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—



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

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

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

11 “(2) INTEREST RATES.—

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

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



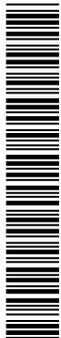
1 “(i) in the case of liabilities reason-
2 ably determined to be payable during the
3 5-year period beginning on the first day of
4 the plan year, the first segment rate with
5 respect to the applicable month,

6 “(ii) in the case of liabilities reason-
7 ably determined to be payable during the
8 15-year period beginning at the end of the
9 period described in clause (i), the second
10 segment rate with respect to the applicable
11 month, and

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

17 “(C) SEGMENT RATES.—For purposes of
18 this paragraph—

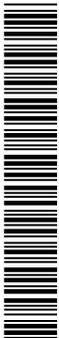
19 “(i) FIRST SEGMENT RATE.—The
20 term ‘first segment rate’ means, with re-
21 spect to any month, the single rate of in-
22 terest which shall be determined by the
23 Secretary for such month on the basis of
24 the corporate bond yield curve for such
25 month, taking into account only that por-



1 tion of such yield curve which is based on
2 bonds maturing during the 5-year period
3 commencing with such month.

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

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



1 “(D) CORPORATE BOND YIELD CURVE.—
2 For purposes of this paragraph—

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

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

18 “(E) APPLICABLE MONTH.—For purposes
19 of this paragraph, the term ‘applicable month’
20 means, with respect to any plan for any plan
21 year, the month which includes the valuation
22 date of such plan for such plan year or, at the
23 election of the plan sponsor, any of the 4
24 months which precede such month. Any election
25 made under this subparagraph shall apply to



1 the plan year for which the election is made and
2 all succeeding plan years, unless the election is
3 revoked with the consent of the Secretary.

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

18 “(G) TRANSITION RULE.—

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



1 “(I) the product of such rate for
2 such month determined without re-
3 gard to this subparagraph, multiplied
4 by the applicable percentage, and

5 “(II) the product of the rate de-
6 termined under the rules of section
7 412(b)(5)(B)(ii)(II) (as in effect for
8 plan years beginning in 2006), multi-
9 plied by a percentage equal to 100
10 percent minus the applicable percent-
11 age.

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

17 “(iii) NEW PLANS INELIGIBLE.—
18 Clause (i) shall not apply to any plan if the
19 first plan year of the plan begins after De-
20 cember 31, 2006.

21 “(3) MORTALITY TABLE.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (C), the mortality table used in
24 determining any present value or making any
25 computation under this section shall be the



1 RP-2000 Combined Mortality Table, using
2 Scale AA, as published by the Society of Actu-
3 aries, as in effect on the date of the enactment
4 of the Pension Protection Act of 2005 and as
5 revised from time to time under subparagraph
6 (B).

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

12 “(C) SUBSTITUTE MORTALITY TABLE.—

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



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

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

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

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

21 “(D) TRANSITION RULE.—Under regula-
22 tions of the Secretary, any difference in as-
23 sumptions as set forth in the mortality table
24 specified in subparagraph (A) and assumptions
25 as set forth in the mortality table described in



1 section 412(l)(7)(C)(ii) (as in effect for plan
2 years beginning in 2006) shall be phased in rat-
3 ably over the first period of 5 plan years begin-
4 ning in or after 2007 so as to be fully effective
5 for the fifth plan year. The preceding sentence
6 shall not apply to any plan if the first plan year
7 of the plan begins after December 31, 2006.

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

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

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



1 “(5) APPROVAL OF LARGE CHANGES IN ACTU-
2 ARIAL ASSUMPTIONS.—

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

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

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

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



1 regarding plans with no unfunded vested
2 benefits) exceed \$50,000,000, and

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

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

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

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

19 “(i) the present value of all liabilities
20 to participants and their beneficiaries
21 under the plan for the plan year, as deter-
22 mined by using, in addition to the actu-
23 arial assumptions described in subsection
24 (g), the supplemental actuarial assump-
25 tions described in subparagraph (B), plus



1 “(ii) a loading factor determined
2 under subparagraph (C).

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

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

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

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

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

24 “(A) the present value of all benefits which
25 are expected to accrue or be earned under the



1 plan during the plan year, determined under
2 the actuarial assumptions used under para-
3 graph (1), plus

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

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

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

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

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



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

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

11 “(i) 20 percent, by

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

14 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
15 TIONS.—

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

20 “(2) INTEREST.—Any payment required under
21 paragraph (1) for a plan year that is made on a date
22 other than the valuation date for such plan year
23 shall be adjusted for interest accruing for the period
24 between the valuation date and the payment date, at



1 the effective rate of interest for the plan for such
2 plan year.

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

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

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

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

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

24 “(i) AMOUNT.—The amount of the
25 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 “(ii) TIME FOR PAYMENT OF IN-
 2 STALLMENTS.—The due dates for required
 3 installments are set forth in the following
 4 table:

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

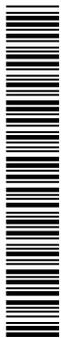
5 “(D) AMOUNT OF REQUIRED INSTALL-
 6 MENT.—For purposes of this paragraph—

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

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

14 “(I) 90 percent of the minimum
 15 required contribution (without regard
 16 to any waiver under section 412(c)) to
 17 the plan for the plan year under this
 18 section, or

19 “(II) in the case of a plan year
 20 beginning after 2007, 100 percent of



1 the minimum required contribution
2 (without regard to any waiver under
3 section 412(c)) to the plan for the
4 preceding plan year.

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

8 “(E) FISCAL YEARS AND SHORT YEARS.—

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

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

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 (f)(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 that such excess is the result of
10 nonrecurring circumstances, the base
11 amount with respect to such quarter
12 shall be determined without regard to
13 amounts related to those nonrecurring
14 circumstances.

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

21 “(iv) ADJUSTED DISBURSEMENTS.—
22 The term ‘adjusted disbursements’ means
23 disbursements from the plan reduced by
24 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 shall provide in regulations.

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

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

17 “(F) REGULATIONS.—The Secretary may
18 prescribe such regulations as are necessary to
19 carry out this paragraph.

20 “(k) IMPOSITION OF LIEN WHERE FAILURE TO
21 MAKE REQUIRED CONTRIBUTIONS.—

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

24 “(A) any person fails to make a contribu-
25 tion payment required by section 412 and this



1 section before the due date for such payment,
2 and

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

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

15 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
16 This subsection shall apply to a defined benefit plan
17 (other than a multiemployer plan) for any plan year
18 for which the funding target attainment percentage
19 (as defined in subsection (d)(2)) of such plan is less
20 than 100 percent. This subsection shall not apply to
21 any plan to which section 4021 of the Employee Re-
22 tirement Income Security Act of 1974 does not
23 apply (as such section is in effect on the date of the
24 enactment of the Pension Protection Act of 2005).



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

7 “(4) NOTICE OF FAILURE; LIEN.—

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

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

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



1 similar to the rules of subsections (c), (d), and
2 (e) of section 4068 of the Employee Retirement
3 Income Security Act of 1974 shall apply with
4 respect to a lien imposed by subsection (a) and
5 the amount with respect to such lien.

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

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

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

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



1 due date shall be the date such payment is re-
2 quired to be made under section 430.

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

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

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

15 **SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EM-**
16 **PLOYER PLANS.**

17 (a) PROHIBITION OF SHUTDOWN BENEFITS AND
18 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS
19 UNDER SINGLE-EMPLOYER PLANS.—Part III of sub-
20 chapter D of chapter 1 of the Internal Revenue Code of
21 1986 (relating to deferred compensation, etc.) is
22 amended—

23 (1) by striking the heading and inserting the
24 following:



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

“Subpart A. Minimum funding standards for pension plans.
“Subpart B. Benefit limitations under single-employer plans.

3 **“Subpart A—Minimum Funding Standards for**
4 **Pension Plans**

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

5 (2) by adding at the end the following new sub-
6 part:

7 **“Subpart B—Benefit Limitations Under Single-**
8 **employer Plans**

“Sec. 436. Prohibition of shutdown benefits and other unpredictable contingent event benefits.

9 **“SEC. 436. PROHIBITION OF SHUTDOWN BENEFITS AND**
10 **OTHER UNPREDICTABLE CONTINGENT**
11 **EVENT BENEFITS UNDER SINGLE-EMPLOYER**
12 **PLANS.**

13 “(a) IN GENERAL.—No pension plan which is defined
14 benefit plan (other than a multiemployer plan) may pro-
15 vide benefits to which participants are entitled solely by
16 reason of the occurrence of—

17 “(1) a plant shutdown, or

18 “(2) any other unpredictable contingent event.



1 “(b) UNPREDICTABLE CONTINGENT EVENT.—For
2 purposes of this subsection, the term ‘unpredictable con-
3 tingent event’ means an event other than—

4 “(1) attainment of any age, performance of any
5 service, receipt or derivation of any compensation, or
6 the occurrence of death or disability, or

7 “(2) an event which is reasonably and reliably
8 predictable (as determined by the Secretary).”.

9 (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-
10 CRUALS.—

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

14 **“SEC. 437. FUNDING-BASED LIMITS ON BENEFITS AND BEN-
15 EFIT ACCRUALS UNDER SINGLE-EMPLOYER
16 PLANS.**

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

19 “(1) IN GENERAL.—No amendment to a de-
20 fined benefit plan (other than a multiemployer plan)
21 which has the effect of increasing liabilities of the
22 plan by reason of increases in benefits, establish-
23 ment of new benefits, changing the rate of benefit
24 accrual, or changing the rate at which benefits be-
25 come nonforfeitable to the plan may take effect dur-



1 ing any plan year if the funding target attainment
2 percentage as of the valuation date of the plan for
3 such plan year is—

4 “(A) less than 80 percent, or

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

7 For purposes of this subparagraph, any increase in
8 benefits under the plan by reason of an increase in
9 the benefit rate provided under the plan or on the
10 basis of an increase in compensation shall be treated
11 as effected by plan amendment.

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

19 “(A) in the case of paragraph (1)(A), the
20 amount of the increase in the funding target of
21 the plan (under section 430) for the plan year
22 attributable to the amendment, and

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



1 “(b) FUNDING-BASED LIMITATION ON CERTAIN
2 FORMS OF DISTRIBUTION.—

3 “(1) IN GENERAL.—A defined benefit plan
4 (other than a multiemployer plan) shall provide that,
5 in any case in which the plan’s funding target at-
6 tainment percentage as of the valuation date of the
7 plan for a plan year is less than 80 percent, the plan
8 may not after such date pay any payment described
9 in section 401(a)(32)(B).

10 “(2) EXCEPTION.—Paragraph (1) shall not
11 apply to any plan for any plan year if the terms of
12 such plan (as in effect for the period beginning on
13 June 29, 2005, and ending with such plan year)
14 provide for no benefit accruals with respect to any
15 participant during such period.

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

23 “(d) NEW PLANS.—Subsections (a) and (c) shall not
24 apply to a plan for the first 5 plan years of the plan. For
25 purposes of this subsection, the reference in this sub-



1 section to a plan shall include a reference to any prede-
2 cessor plan.

3 “(e) PRESUMED UNDERFUNDING FOR PURPOSES OF
4 BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUND-
5 ING STATUS.—

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

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



1 of the first day of such 10th month, and such day
2 shall be deemed, for purposes of such subsections, to
3 be the valuation date of the plan for the current
4 plan year.

5 “(3) PRESUMPTION OF UNDERFUNDING AFTER
6 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—

7 In any case in which—

8 “(A) a benefit limitation under subsection
9 (a), (b), or (c) did not apply to a plan with re-
10 spect to the plan year preceding the current
11 plan year, but the funding target attainment
12 percentage of the plan for such preceding plan
13 year was not more than 10 percentage points
14 greater than the percentage which would have
15 caused such subsection to apply to the plan
16 with respect to such preceding plan year, and

17 “(B) as of the first day of the 4th month
18 of the current plan year, the enrolled actuary of
19 the plan has not certified the actual funding
20 target attainment percentage of the plan as of
21 the valuation date of the plan for the current
22 plan year,

23 until the enrolled actuary so certifies, such first day
24 shall be deemed, for purposes of such subsection, to
25 be the valuation date of the plan for the current



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

8 “(f) RESTORATION BY PLAN AMENDMENT OF BENE-
9 FITS OR BENEFIT ACCRUAL.—In any case in which a pro-
10 hibition under subsection (b) of the payment of lump sum
11 distributions or benefits in any other accelerated form or
12 a cessation of benefit accruals under subsection (c) is ap-
13 plied to a plan with respect to any plan year and such
14 prohibition or cessation, as the case may be, ceases to
15 apply to any subsequent plan year, the plan may provide
16 for the resumption of such benefit payment or such benefit
17 accrual only by means of the adoption of a plan amend-
18 ment after the valuation date of the plan for such subse-
19 quent plan year. The preceding sentence shall not apply
20 to a prohibition or cessation required by reason of sub-
21 section (e).

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

24 “(1) IN GENERAL.—For purposes of this sec-
25 tion, the term ‘funding target attainment percent-



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

3 “(A) the value of plan assets for the plan
4 year (as determined under section 430(g)) re-
5 duced by the pre-funding balance and the fund-
6 ing standard carryover balance (within the
7 meaning of section 430(f)), bears to

8 “(B) the funding target of the plan for the
9 plan year (as determined under section
10 430(d)(1), but without regard to section
11 430(i)(1)).

12 “(2) APPLICATION TO PLANS WHICH ARE
13 FULLY FUNDED WITHOUT REGARD TO REDUCTIONS
14 FOR FUNDING BALANCES.—In the case of a plan for
15 any plan year, if the funding target attainment per-
16 centage is 100 percent or more (determined without
17 regard to this paragraph and without regard to the
18 reduction under paragraph (1)(A) for the pre-fund-
19 ing balance and the funding standard carryover bal-
20 ance), paragraph (1) shall be applied without regard
21 to such reduction.”.

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

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



1 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
2 plan shall not fail to meet the requirements of section
3 411(d)(6) of the Internal Revenue Code of 1986 or section
4 204(g) of the Employee Retirement Income Security Act
5 of 1974 solely by reason of the adoption by the plan of
6 an amendment necessary to meet the requirements of the
7 amendments made by this section.

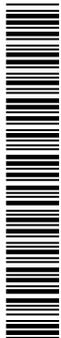
8 (d) EFFECTIVE DATE.—

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

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

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

25 (A) the later of—



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

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

11 (B) January 1, 2009.

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

22 (2) in subsection (b)(1)(F)—

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



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

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

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

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

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

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

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

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

25 “(A) the lesser of—



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

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

11 “(B) 125 percent of the sum of the target
12 liability amount and the target normal cost de-
13 termined under section 430 for such plan
14 year.”.

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

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

21 (e) EXCISE TAXES.—

22 (1) IN GENERAL.—Subsections (a) and (b) of
23 section 4971 of such Code are amended to read as
24 follows:



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

5 “(1) in the case of a defined benefit plan which
6 is not a multiemployer plan, 10 percent of the aggregate
7 unpaid minimum required contributions for all
8 plan years remaining unpaid as of the end of any
9 plan year ending with or within the taxable year,
10 and

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

15 “(b) ADDITIONAL TAX.—If—

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

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

24 there is hereby imposed a tax equal to 100 percent of the
25 unpaid minimum required contribution or accumulated



1 funding deficiency, whichever is applicable, to the extent
2 not so paid or corrected.”.

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

4 (A) by striking “the last two sentences of
5 section 412(a)” in paragraph (1) and inserting
6 “section 431”, and

7 (B) by adding at the end the following new
8 paragraph:

9 “(4) UNPAID MINIMUM REQUIRED CONTRIBU-
10 TION.—

11 “(A) IN GENERAL.—The term ‘unpaid
12 minimum required contribution’ means, with re-
13 spect to any plan year, any minimum required
14 contribution under section 430 for the plan
15 year which is not paid on or before the due date
16 (as determined under section 430(j)(1)) for the
17 plan year.

18 “(B) ORDERING RULE.—Any payment to
19 or under a plan for any plan year shall be allo-
20 cated first to unpaid minimum required con-
21 tributions for all preceding plan years in the
22 order in which such contributions became due
23 and then to the minimum required contribution
24 under section 430 for the plan year.”.



1 (3) Section 4971(e)(1) of such Code is amended
2 by striking “section 412(b)(3)(A)” and inserting
3 “section 412(a)(2)”.

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

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

8 (B) by striking “section 412(m)” and in-
9 serting “section 430(j)(3)”.

10 (5) Section 4972(c)(7) of such Code is amended
11 by striking “except to the extent that such contribu-
12 tions exceed the full-funding limitation (as defined in
13 section 412(c)(7), determined without regard to sub-
14 paragraph (A)(i)(I) thereof)” and inserting “except,
15 in the case of a multiemployer plan, to the extent
16 that such contributions exceed the full-funding limi-
17 tation (as defined in section 431(c)(6))”.

18 (f) REPORTING REQUIREMENTS.—Section 6059(b) of
19 such Code is amended—

20 (1) by striking “the accumulated funding defi-
21 ciency (as defined in section 412(a))” in paragraph
22 (2) and inserting “the minimum required contribu-
23 tion determined under section 430, or the accumu-
24 lated funding deficiency determined under section
25 431,” and



1 (2) by striking paragraph (3)(B) and inserting:

2 “(B) the requirements for reasonable actu-
3 arial assumptions under section 430(h)(1) or
4 431(c)(3), whichever are applicable, have been
5 complied with.”.

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

9 **Subtitle C—Other Provisions**

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

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

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

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

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

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

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



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

6 (2) For purposes of—

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

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

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

15 (3) Notwithstanding section 430(f)(4)(B) of
16 such Code and section 303(f)(4)(B) of such Act, for
17 purposes of section 430(c)(4)(A)(ii) of such Code
18 and section 303(c)(4)(A)(ii) of such Act, the value
19 of plan assets is deemed to be such amount, reduced
20 by the amount of the pre-funding balance if, pursu-
21 ant to a binding written agreement with the Pension
22 Benefit Guaranty Corporation entered into before
23 January 1, 2007, the funding standard carryover
24 balance is not available to reduce the minimum re-
25 quired contribution for the plan year.



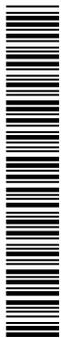
1 (4) Section 430(c)(4)(B) of such Code and sec-
 2 tion 303(c)(4)(B) of such Act (relating to phase-in
 3 of funding target for determination of funding short-
 4 fall) shall each be applied by substituting “2012”
 5 for “2011” therein and by substituting for the table
 6 therein the following:

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

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

16 (d) SPECIAL RULE FOR 2006.—

17 (1) IN GENERAL.—Section 769(c)(3) of the Re-
 18 tirement Protection Act of 1994, as added by section
 19 201 of the Pension Funding Equity Act of 2004, is
 20 amended by striking “and 2005” and inserting “,
 21 2005, and 2006”.



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

4 (e) CONFORMING AMENDMENT.—

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

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

10 **SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COM-**
11 **PENSATION PLANS WHEN EMPLOYER DE-**
12 **FINED BENEFIT PLAN IN AT-RISK STATUS.**

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

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

21 “(A) during any period in which a defined
22 benefit plan to which section 412 applies is in
23 an at-risk status (as defined in section
24 430(i)(3)), assets are set aside (directly or indi-
25 rectly) in a trust (or other arrangement deter-



1 mined by the Secretary), or transferred to such
2 a trust or other arrangement, for purposes of
3 paying deferred compensation under a non-
4 qualified deferred compensation plan of the em-
5 ployer maintaining the defined benefit plan, or
6 “(B) a nonqualified deferred compensation
7 plan of the employer provides that assets will
8 become restricted to the provision of benefits
9 under the plan in connection with such at-risk
10 status (or other similar financial measure deter-
11 mined by the Secretary) of the defined benefit
12 plan, or assets are so restricted,

13 such assets shall for purposes of section 83 be treat-
14 ed as property transferred in connection with the
15 performance of services whether or not such assets
16 are available to satisfy claims of general creditors.”.

17 (b) CONFORMING AMENDMENTS.—Paragraphs (4)
18 and (5) of section 409A(b) of such Code, as redesignated
19 by subsection (a) of this subsection, are each amended by
20 striking “paragraph (1) or (2)” each place it appears and
21 inserting “paragraph (1), (2), or (3)”.

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



1 (d) SPECIAL RULE FOR 2006.—For purposes of de-
2 termining if a plan is in at-risk status (within the meaning
3 of section 409A of such Code, as added by this section)
4 for any plan year beginning in 2006, such section shall
5 be applied by substituting the plan’s modified funded cur-
6 rent liability percentage for the plan’s funding target at-
7 tainment percentage. For purposes of the preceding sen-
8 tence, the term “modified funded current liability percent-
9 age” means the funded current liability percentage (as de-
10 fined in section 412(l)(8) of such Code), reduced as de-
11 scribed in subparagraph (E) thereof.

12 **TITLE II—FUNDING RULES FOR**
13 **MULTIEMPLOYER DEFINED**
14 **BENEFIT PLANS**

15 **Subtitle A—Amendments to Em-**
16 **ployee Retirement Income Secu-**
17 **rity Act of 1974**

18 **SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
19 **BENEFIT PLANS.**

20 [See section 201 of the bill as reported by the Com-
21 mittee on Education and the Workforce.]



1 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**
2 **PLOYER PLANS IN ENDANGERED OR CRIT-**
3 **ICAL STATUS.**

4 [See section 202 of the bill as reported by the Com-
5 mittee on Education and the Workforce.]

6 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
7 **TIEMPLOYER PLANS.**

8 [See section 203 of the bill as reported by the Com-
9 mittee on Education and the Workforce.]

10 **SEC. 204. WITHDRAWAL LIABILITY REFORMS.**

11 [See section 204 of the bill as reported by the Com-
12 mittee on Education and the Workforce.]

13 **SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO**
14 **PROCEDURES APPLICABLE TO DISPUTES IN-**
15 **VOLVING WITHDRAWAL LIABILITY.**

16 [See section 205 of the bill as reported by the Com-
17 mittee on Education and the Workforce.]

18 **Subtitle B—Amendments to**
19 **Internal Revenue Code of 1986**

20 **SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
21 **BENEFIT PLANS.**

22 (a) IN GENERAL.—Subpart A of part III of sub-
23 chapter D of chapter 1 of the Internal Revenue Code of
24 1986 (added by section 112 of this Act) is amended by
25 adding at the end the following new section:



1 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**
2 **PLOYER PLANS.**

3 “(a) IN GENERAL.—For purposes of section 412, the
4 accumulated funding deficiency of a multiemployer plan
5 for any plan year is—

6 “(1) except as provided in paragraph (2), the
7 amount, determined as of the end of the plan year,
8 equal to the excess (if any) of the total charges to
9 the funding standard account of the plan for all plan
10 years (beginning with the first plan year for which
11 section 412 applies to the plan) over the total credits
12 to such account for such years, and

13 “(2) if the multiemployer plan is in reorganiza-
14 tion for any plan year, the accumulated funding de-
15 ficiency of the plan determined under section 418B.

16 “(b) FUNDING STANDARD ACCOUNT.—

17 “(1) ACCOUNT REQUIRED.—Each multiem-
18 ployer plan to which section 412 applies shall estab-
19 lish and maintain a funding standard account. Such
20 account shall be credited and charged solely as pro-
21 vided in this section.

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

25 “(A) the normal cost of the plan for the
26 plan year,



1 “(B) the amounts necessary to amortize in
2 equal annual installments (until fully amor-
3 tized)—

4 “(i) in the case of a plan in existence
5 on January 1, 1974, the unfunded past
6 service liability under the plan on the first
7 day of the first plan year to which section
8 412 applies, over a period of 40 plan years,

9 “(ii) in the case of a plan which comes
10 into existence after January 1, 1974, the
11 unfunded past service liability under the
12 plan on the first day of the first plan year
13 to which section 412 applies, over a period
14 of 15 plan years,

15 “(iii) separately, with respect to each
16 plan year, the net increase (if any) in un-
17 funded past service liability under the plan
18 arising from plan amendments adopted in
19 such year, over a period of 15 plan years,

20 “(iv) separately, with respect to each
21 plan year, the net experience loss (if any)
22 under the plan, over a period of 15 plan
23 years, and

24 “(v) separately, with respect to each
25 plan year, the net loss (if any) resulting

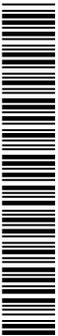


1 from changes in actuarial assumptions
2 used under the plan, over a period of 15
3 plan years,

4 “(C) the amount necessary to amortize
5 each waived funding deficiency (within the
6 meaning of section 412(c)(3)) for each prior
7 plan year in equal annual installments (until
8 fully amortized) over a period of 15 plan years,

9 “(D) the amount necessary to amortize in
10 equal annual installments (until fully amor-
11 tized) over a period of 5 plan years any amount
12 credited to the funding standard account under
13 section 412(b)(3)(D) (as in effect on the day
14 before the date of the enactment of the Pension
15 Protection Act of 2005), and

16 “(E) the amount necessary to amortize in
17 equal annual installments (until fully amor-
18 tized) over a period of 20 years the contribu-
19 tions which would be required to be made under
20 the plan but for the provisions of section
21 412(c)(7)(A)(i)(I) (as in effect on the day be-
22 fore the date of the enactment of the Pension
23 Protection Act of 2005).



1 “(3) CREDITS TO ACCOUNT.—For a plan year,
2 the funding standard account shall be credited with
3 the sum of—

4 “(A) the amount considered contributed by
5 the employer to or under the plan for the plan
6 year,

7 “(B) the amount necessary to amortize in
8 equal annual installments (until fully amor-
9 tized)—

10 “(i) separately, with respect to each
11 plan year, the net decrease (if any) in un-
12 funded past service liability under the plan
13 arising from plan amendments adopted in
14 such year, over a period of 15 plan years,

15 “(ii) separately, with respect to each
16 plan year, the net experience gain (if any)
17 under the plan, over a period of 15 plan
18 years, and

19 “(iii) separately, with respect to each
20 plan year, the net gain (if any) resulting
21 from changes in actuarial assumptions
22 used under the plan, over a period of 15
23 plan years,



1 “(C) the amount of the waived funding de-
2 ficiency (within the meaning of section
3 412(c)(3)) for the plan year, and

4 “(D) in the case of a plan year for which
5 the accumulated funding deficiency is deter-
6 mined under the funding standard account if
7 such plan year follows a plan year for which
8 such deficiency was determined under the alter-
9 native minimum funding standard under section
10 412(g) (as in effect on the day before the date
11 of the enactment of the Pension Protection Act
12 of 2005), the excess (if any) of any debit bal-
13 ance in the funding standard account (deter-
14 mined without regard to this subparagraph)
15 over any debit balance in the alternative min-
16 imum funding standard account.

17 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
18 ORTIZED TO PLAN YEARS BEFORE 2007.—In the case
19 of any amount amortized under section 412(b) (as
20 in effect on the day before the date of the enactment
21 of the Pension Protection Act of 2005) over any pe-
22 riod beginning with a plan year beginning before
23 2007, in lieu of the amortization described in para-
24 graphs (2)(B) and (3)(B), such amount shall con-



1 tinue to be amortized under such section as so in ef-
2 fect.

3 “(5) COMBINING AND OFFSETTING AMOUNTS
4 TO BE AMORTIZED.—Under regulations prescribed
5 by the Secretary, amounts required to be amortized
6 under paragraph (2) or paragraph (3), as the case
7 may be—

8 “(A) may be combined into one amount
9 under such paragraph to be amortized over a
10 period determined on the basis of the remaining
11 amortization period for all items entering into
12 such combined amount, and

13 “(B) may be offset against amounts re-
14 quired to be amortized under the other such
15 paragraph, with the resulting amount to be am-
16 ortized over a period determined on the basis of
17 the remaining amortization periods for all items
18 entering into whichever of the two amounts
19 being offset is the greater.

20 “(6) INTEREST.—Except as provided in sub-
21 section (c)(9), the funding standard account (and
22 items therein) shall be charged or credited (as deter-
23 mined under regulations prescribed by the Sec-
24 retary) with interest at the appropriate rate con-



1 sistent with the rate or rates of interest used under
2 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
8 414(f) as in effect immediately before such date)—

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

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

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



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

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

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

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

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

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



1 payment of all or part of an employer's with-
2 drawal liability under part 1 of subtitle E of
3 title IV of the Employee Retirement Income Se-
4 curity Act of 1974 shall be considered an
5 amount contributed by the employer to or
6 under the plan. The Secretary may prescribe by
7 regulation additional charges and credits to a
8 multiemployer plan's funding standard account
9 to the extent necessary to prevent withdrawal li-
10 ability payments from being unduly reflected as
11 advance funding for plan liabilities.

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

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

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



1 The preceding sentence shall not apply to the
2 extent of any accumulated funding deficiency
3 under section 418B(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 the Em-
10 ployee Retirement Income Security Act of 1974
11 or to a fund exempt under section 501(c)(22)
12 pursuant to section 4223 of such Act shall re-
13 duce the amount of contributions considered re-
14 ceived by 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 of such Act and subsequently re-
20 funded to the employer by the plan shall be
21 charged to the funding standard account in ac-
22 cordance with regulations prescribed by the
23 Secretary.

24 “(E) ELECTION FOR DEFERRAL OF
25 CHARGE FOR PORTION OF NET EXPERIENCE



1 LOSS.—If an election is in effect under section
2 412(b)(7)(F) (as in effect on the day before the
3 date of the enactment of the Pension Protection
4 Act of 2005) for any plan year, the funding
5 standard account shall be charged in the plan
6 year to which the portion of the net experience
7 loss deferred by such election was deferred with
8 the amount so deferred (and paragraph
9 (2)(B)(iv) shall not apply to the amount so
10 charged).

11 “(F) FINANCIAL ASSISTANCE.—Any
12 amount of any financial assistance from the
13 Pension Benefit Guaranty Corporation to any
14 plan, and any repayment of such amount, shall
15 be taken into account under this section and
16 section 412 in such manner as is determined by
17 the Secretary.

18 “(G) SHORT-TERM BENEFITS.—To the ex-
19 tent that any plan amendment increases the un-
20 funded past service liability under the plan by
21 reason of an increase in benefits which are pay-
22 able under the plan during a period that does
23 not exceed 14 years, paragraph (2)(B)(iii) shall
24 be applied separately with respect to such in-
25 crease in unfunded past service liability by sub-



1 stituting the number of years of the period dur-
2 ing which such benefits are payable for '15'.

3 “(c) ADDITIONAL RULES.—

4 “(1) DETERMINATIONS TO BE MADE UNDER
5 FUNDING METHOD.—For purposes of this section,
6 normal costs, accrued liability, past service liabilities,
7 and experience gains and losses shall be determined
8 under the funding method used to determine costs
9 under the plan.

10 “(2) VALUATION OF ASSETS.—

11 “(A) IN GENERAL.—For purposes of this
12 section, the value of the plan's assets shall be
13 determined on the basis of any reasonable actu-
14 arial method of valuation which takes into ac-
15 count fair market value and which is permitted
16 under regulations prescribed by the Secretary.

17 “(B) ELECTION WITH RESPECT TO
18 BONDS.—The value of a bond or other evidence
19 of indebtedness which is not in default as to
20 principal or interest may, at the election of the
21 plan administrator, be determined on an amor-
22 tized basis running from initial cost at purchase
23 to par value at maturity or earliest call date.
24 Any election under this subparagraph shall be
25 made at such time and in such manner as the



1 Secretary shall by regulations provide, shall
2 apply to all such evidences of indebtedness, and
3 may be revoked only with the consent of the
4 Secretary.

5 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
6 SONABLE.—For purposes of this section, all costs, li-
7 abilities, rates of interest, and other factors under
8 the plan shall be determined on the basis of actu-
9 arial assumptions and methods—

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

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

16 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
17 PERIENCE GAIN OR LOSS.—For purposes of this sec-
18 tion, if—

19 “(A) a change in benefits under the Social
20 Security Act or in other retirement benefits cre-
21 ated under Federal or State law, or

22 “(B) a change in the definition of the term
23 ‘wages’ under section 3121, or a change in the
24 amount of such wages taken into account under



1 regulations prescribed for purposes of section
2 401(a)(5),
3 results in an increase or decrease in accrued liability
4 under a plan, such increase or decrease shall be
5 treated as an experience loss or gain.

6 “(5) FULL FUNDING.—If, as of the close of a
7 plan year, a plan would (without regard to this para-
8 graph) have an accumulated funding deficiency in
9 excess of the full funding limitation—

10 “(A) the funding standard account shall be
11 credited with the amount of such excess, and

12 “(B) all amounts described in subpara-
13 graphs (B), (C), and (D) of subsection (b)(2)
14 and subparagraph (B) of subsection (b)(3)
15 which are required to be amortized shall be con-
16 sidered fully amortized for purposes of such
17 subparagraphs.

18 “(6) FULL-FUNDING LIMITATION.—

19 “(A) IN GENERAL.—For purposes of para-
20 graph (5), the term ‘full-funding limitation’
21 means the excess (if any) of—

22 “(i) the accrued liability (including
23 normal cost) under the plan (determined
24 under the entry age normal funding meth-
25 od if such accrued liability cannot be di-



1 rectly calculated under the funding method
2 used for the plan), over

3 “(ii) the lesser of—

4 “(I) the fair market value of the
5 plan’s assets, or

6 “(II) the value of such assets de-
7 termined under paragraph (2).

8 “(B) MINIMUM AMOUNT.—

9 “(i) IN GENERAL.—In no event shall
10 the full-funding limitation determined
11 under subparagraph (A) be less than the
12 excess (if any) of—

13 “(I) 90 percent of the current li-
14 ability of the plan (including the ex-
15 pected increase in current liability due
16 to benefits accruing during the plan
17 year), over

18 “(II) the value of the plan’s as-
19 sets determined under paragraph (2).

20 “(ii) ASSETS.—For purposes of clause
21 (i), assets shall not be reduced by any
22 credit balance in the funding standard ac-
23 count.

24 “(C) FULL FUNDING LIMITATION.—For
25 purposes of this paragraph, unless otherwise



1 provided by the plan, the accrued liability under
2 a multiemployer plan shall not include benefits
3 which are not nonforfeitable under the plan
4 after the termination of the plan (taking into
5 consideration section 411(d)(3)).

6 “(D) CURRENT LIABILITY.—For purposes
7 of this paragraph—

8 “(i) IN GENERAL.—The term ‘current
9 liability’ means all liabilities to employees
10 and their beneficiaries under the plan.

11 “(ii) TREATMENT OF UNPREDICTABLE
12 CONTINGENT EVENT BENEFITS.—For pur-
13 poses of clause (i), any benefit contingent
14 on an event other than—

15 “(I) age, service, compensation,
16 death, or disability, or

17 “(II) an event which is reason-
18 ably and reliably predictable (as deter-
19 mined by the Secretary),

20 shall not be taken into account until the
21 event on which the benefit is contingent oc-
22 curs.

23 “(iii) INTEREST RATE USED.—The
24 rate of interest used to determine current
25 liability under this paragraph shall be the



1 rate of interest determined under subpara-
2 graph (E).

3 “(iv) MORTALITY TABLES.—

4 “(I) COMMISSIONERS’ STANDARD
5 TABLE.—In the case of plan years be-
6 ginning before the first plan year to
7 which the first tables prescribed under
8 subclause (II) apply, the mortality
9 table used in determining current li-
10 ability under this paragraph shall be
11 the table prescribed by the Secretary
12 which is based on the prevailing com-
13 missioners’ standard table (described
14 in section 807(d)(5)(A)) used to de-
15 termine reserves for group annuity
16 contracts issued on January 1, 1993.

17 “(II) SECRETARIAL AUTHOR-
18 ITY.—The Secretary may by regula-
19 tion prescribe for plan years beginning
20 after December 31, 1999, mortality
21 tables to be used in determining cur-
22 rent liability under this subsection.
23 Such tables shall be based upon the
24 actual experience of pension plans and
25 projected trends in such experience.



1 In prescribing such tables, the Sec-
2 retary shall take into account results
3 of available independent studies of
4 mortality of individuals covered by
5 pension plans.

6 “(v) SEPARATE MORTALITY TABLES
7 FOR THE DISABLED.—Notwithstanding
8 clause (iv)—

9 “(I) IN GENERAL.—In the case
10 of plan years beginning after Decem-
11 ber 31, 1995, the Secretary shall es-
12 tablish mortality tables which may be
13 used (in lieu of the tables under
14 clause (iv)) to determine current li-
15 ability under this subsection for indi-
16 viduals who are entitled to benefits
17 under the plan on account of dis-
18 ability. The Secretary shall establish
19 separate tables for individuals whose
20 disabilities occur in plan years begin-
21 ning before January 1, 1995, and for
22 individuals whose disabilities occur in
23 plan years beginning on or after such
24 date.



1 “(II) SPECIAL RULE FOR DIS-
2 ABILITIES OCCURRING AFTER 1994.—
3 In the case of disabilities occurring in
4 plan years beginning after December
5 31, 1994, the tables under subclause
6 (I) shall apply only with respect to in-
7 dividuals described in such subclause
8 who are disabled within the meaning
9 of title II of the Social Security Act
10 and the regulations thereunder.

11 “(vi) PERIODIC REVIEW.—The Sec-
12 retary shall periodically (at least every 5
13 years) review any tables in effect under
14 this subparagraph and shall, to the extent
15 the Secretary determines necessary, by
16 regulation update the tables to reflect the
17 actual experience of pension plans and pro-
18 jected trends in such experience.

19 “(E) REQUIRED CHANGE OF INTEREST
20 RATE.—For purposes of determining a plan’s
21 current liability for purposes of this
22 paragraph—

23 “(i) IN GENERAL.—If any rate of in-
24 terest used under the plan under sub-
25 section (b)(6) to determine cost is not



1 within the permissible range, the plan shall
2 establish a new rate of interest within the
3 permissible range.

4 “(ii) PERMISSIBLE RANGE.—For pur-
5 poses of this subparagraph—

6 “(I) IN GENERAL.—Except as
7 provided in subclause (II), the term
8 ‘permissible range’ means a rate of in-
9 terest which is not more than 5 per-
10 cent above, and not more than 10 per-
11 cent below, the weighted average of
12 the rates of interest on 30-year Treas-
13 ury securities during the 4-year period
14 ending on the last day before the be-
15 ginning of the plan year.

16 “(II) SECRETARIAL AUTHOR-
17 ITY.—If the Secretary finds that the
18 lowest rate of interest permissible
19 under subclause (I) is unreasonably
20 high, the Secretary may prescribe a
21 lower rate of interest, except that
22 such rate may not be less than 80
23 percent of the average rate deter-
24 mined under such subclause.



1 “(iii) ASSUMPTIONS.—Notwith-
2 standing paragraph (3)(A), the interest
3 rate used under the plan shall be—

4 “(I) determined without taking
5 into account the experience of the
6 plan and reasonable expectations, but

7 “(II) consistent with the assump-
8 tions which reflect the purchase rates
9 which would be used by insurance
10 companies to satisfy the liabilities
11 under the plan.

12 “(7) ANNUAL VALUATION.—

13 “(A) IN GENERAL.—For purposes of this
14 section, a determination of experience gains and
15 losses and a valuation of the plan’s liability
16 shall be made not less frequently than once
17 every year, except that such determination shall
18 be made more frequently to the extent required
19 in particular cases under regulations prescribed
20 by the Secretary.

21 “(B) VALUATION DATE.—

22 “(i) CURRENT YEAR.—Except as pro-
23 vided in clause (ii), the valuation referred
24 to in subparagraph (A) shall be made as of
25 a date within the plan year to which the



1 valuation refers or within one month prior
2 to the beginning of such year.

3 “(ii) USE OF PRIOR YEAR VALU-
4 ATION.—The valuation referred to in sub-
5 paragraph (A) may be made as of a date
6 within the plan year prior to the year to
7 which the valuation refers if, as of such
8 date, the value of the assets of the plan are
9 not less than 100 percent of the plan’s cur-
10 rent liability (as defined in paragraph
11 (6)(D) without regard to clause (iv) there-
12 of).

13 “(iii) ADJUSTMENTS.—Information
14 under clause (ii) shall, in accordance with
15 regulations, be actuarially adjusted to re-
16 flect significant differences in participants.

17 “(iv) LIMITATION.—A change in fund-
18 ing method to use a prior year valuation,
19 as provided in clause (ii), may not be made
20 unless as of the valuation date within the
21 prior plan year, the value of the assets of
22 the plan are not less than 125 percent of
23 the plan’s current liability (as defined in
24 paragraph (6)(D) without regard to clause
25 (iv) thereof).



1 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
2 DEEMED MADE.—For purposes of this section, any
3 contributions for a plan year made by an employer
4 after the last day of such plan year, but not later
5 than two and one-half months after such day, shall
6 be deemed to have been made on such last day. For
7 purposes of this subparagraph, such two and one-
8 half month period may be extended for not more
9 than six months under regulations prescribed by the
10 Secretary.

11 “(9) INTEREST RULE FOR WAIVERS AND EX-
12 TENSIONS.—The interest rate applicable for any
13 plan year for purposes of computing the amortiza-
14 tion charge described in subsection (b)(2)(C) and in
15 connection with an extension granted under sub-
16 section (d) shall be the greater of—

17 “(A) 150 percent of the Federal mid-term
18 rate (as in effect under section 1274 for the 1st
19 month of such plan year), or

20 “(B) the rate of interest used under the
21 plan for determining costs.

22 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
23 MULTIEMPLOYER PLANS.—In the case of a multiemployer
24 plan—



1 “(1) EXTENSION.—The period of years re-
2 quired to amortize any unfunded liability (described
3 in any clause of subsection (b)(2)(B)) of any multi-
4 employer plan shall be extended by the Secretary for
5 a period of time (not in excess of 5 years) if the Sec-
6 retary determines that—

7 “(A) absent the extension, the plan would
8 have an accumulated funding deficiency in any
9 of the next 10 plan years,

10 “(B) the plan sponsor has adopted a plan
11 to improve the plan’s funding status, and

12 “(C) taking into account the extension, the
13 plan is projected to have sufficient assets to
14 timely pay its expected benefit liabilities and
15 other anticipated expenditures

16 “(2) ADDITIONAL EXTENSION.—The period of
17 years required to amortize any unfunded liability
18 (described in any clause of subsection (b)(2)(B)) of
19 any multiemployer plan may be extended (in addi-
20 tion to any extension under paragraph (1)) by the
21 Secretary for a period of time (not in excess of 5
22 years) if the Secretary determines that such exten-
23 sion would carry out the purposes of the Employee
24 Retirement Income Security Act of 1974 and would
25 provide adequate protection for participants under



1 the plan and their beneficiaries and if the Secretary
2 determines that the failure to permit such extension
3 would—

4 “(A) result in—

5 “(i) a substantial risk to the voluntary
6 continuation of the plan, or

7 “(ii) a substantial curtailment of pen-
8 sion benefit levels or employee compensa-
9 tion, and

10 “(B) be adverse to the interests of plan
11 participants in the aggregate.

12 “(3) ADVANCE NOTICE.—

13 “(A) IN GENERAL.—The Secretary shall,
14 before granting an extension under this section,
15 require each applicant to provide evidence satis-
16 factory to the Secretary that the applicant has
17 provided notice of the filing of the application
18 for such extension to each affected party (as de-
19 fined in section 4001(a)(21) of the Employee
20 Retirement Income Security Act of 1974) with
21 respect to the affected plan. Such notice shall
22 include a description of the extent to which the
23 plan is funded for benefits which are guaran-
24 teed under title IV of such Act and for benefit
25 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) CONFORMING AMENDMENTS.—

6 (1) Section 418(b)(2) of such Code is
7 amended—

8 (A) by striking “section 412(b)(2)” in sub-
9 paragraph (A) and inserting “section
10 431(b)(2)”, and

11 (B) by striking “section 412(b)(3)(B)” in
12 subparagraph (B) and inserting “section
13 431(b)(3)(B)”.

14 (2) Section 418B of such Code is amended—

15 (A) by striking “section 412(b)(2)(A) or
16 (B)” in subsection (d)(1)(B) and inserting
17 “section 431(b)(2)(A) or (B)”,

18 (B) by striking “section 412(c)(8)” in sub-
19 section (e) and inserting “section 412(d)(2)”,
20 and

21 (C) by striking “section 412(c)(3)” in sub-
22 section (g) and inserting “section 431(c)(3)”.

23 (3) Section 418D(a)(2) of such Code is
24 amended—



1 (A) by striking “section 412(c)(8)” and in-
2 serting “section 412(d)(2)”, and

3 (B) by striking “section 412(c)(10)” and
4 inserting “section 431(c)(8)”.

5 (c) CLERICAL AMENDMENT.—The table of sections
6 for subpart A of part III of subchapter D of chapter 1
7 of such Code is amended by adding after the item relating
8 to section 430 the following new item:

“Sec. 431. Minimum funding standards for multiemployer plans.”.

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. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**
13 **PLOYER PLANS IN ENDANGERED OR CRIT-**
14 **ICAL STATUS.**

15 (a) IN GENERAL.—Subpart A of part III of sub-
16 chapter D of chapter 1 of the Internal Revenue Code of
17 1986 is amended by inserting after section 431 the fol-
18 lowing new section:

19 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**
20 **PLOYER PLANS IN ENDANGERED STATUS OR**
21 **CRITICAL STATUS.**

22 “(a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

23 “(1) IN GENERAL.—During the 90-day period
24 beginning on first day of each plan year of a multi-
25 employer plan, the plan actuary shall certify to the



1 Secretary whether or not the plan is in endangered
2 status for such plan year and whether or not the
3 plan is in critical status for such plan year.

4 “(2) ACTUARIAL PROJECTIONS OF ASSETS AND
5 LIABILITIES.—

6 “(A) IN GENERAL.—In making the deter-
7 minations under paragraph (1), the plan actu-
8 ary shall make projections under subsections
9 (b)(2) and (c)(2) for the current and succeeding
10 plan years, using reasonable actuarial assump-
11 tions and methods, of the current value of the
12 assets of the plan and the present value of all
13 liabilities to participants and beneficiaries under
14 the plan for the current plan year as of the be-
15 ginning of such year, as based on the actuarial
16 statement prepared for the preceding plan year
17 under section 103(d) of the Employee Retirement
18 Income Security Act of 1974.

19 “(B) DETERMINATIONS OF FUTURE CON-
20 TRIBUTIONS.—Any such actuarial projection of
21 plan assets shall assume—

22 “(i) reasonably anticipated employer
23 and employee contributions for the current
24 and succeeding plan years, assuming that
25 the terms of the one or more collective bar-



1 gaining agreements pursuant to which the
2 plan is maintained for the current plan
3 year continue in effect for succeeding plan
4 years, or

5 “(ii) that employer and employee con-
6 tributions for the most recent plan year
7 will continue indefinitely, but only if the
8 plan actuary determines there have been
9 no significant demographic changes that
10 would make continued application of such
11 terms unreasonable.

12 “(3) PRESUMED STATUS IN ABSENCE OF TIME-
13 LY ACTUARIAL CERTIFICATION.—If certification
14 under this subsection is not made before the end of
15 the 90-day period specified in paragraph (1), the
16 plan shall be presumed to be in critical status for
17 such plan year until such time as the plan actuary
18 makes a contrary certification.

19 “(4) NOTICE.—In any case in which a multiem-
20 ployer plan is certified to be in endangered status
21 under paragraph (1) or enters into critical status,
22 the plan sponsor shall, not later than 30 days after
23 the date of the certification or entry, provide notifi-
24 cation of the endangered or critical status to the
25 participants and beneficiaries, the bargaining par-



1 ties, the Pension Benefit Guaranty Corporation, the
2 Secretary of the Treasury, and the Secretary of
3 Labor.

4 “(b) FUNDING RULES FOR MULTIEMPLOYER PLANS
5 IN ENDANGERED STATUS.—

6 “(1) IN GENERAL.—In any case in which a
7 multiemployer plan is in endangered status for a
8 plan year and no funding improvement plan under
9 this subsection with respect to such multiemployer
10 plan is in effect for the plan year, the plan sponsor
11 shall, in accordance with this subsection, amend the
12 multiemployer plan to include a funding improve-
13 ment plan upon approval thereof by the bargaining
14 parties under this subsection. The amendment shall
15 be adopted not later than 240 days after the date
16 on which the plan is certified to be in endangered
17 status under subsection (a)(1).

18 “(2) ENDANGERED STATUS.—A multiemployer
19 plan is in endangered status for a plan year if, as
20 determined by the plan actuary under subsection
21 (a)—

22 “(A) the plan’s funded percentage for such
23 plan year is less than 80 percent, or

24 “(B) the plan has an accumulated funding
25 deficiency for such plan year under section 431



1 or is projected to have such an accumulated
2 funding deficiency for any of the 6 succeeding
3 plan years, taking into account any extension of
4 amortization periods under section 431(d).

5 “(3) FUNDING IMPROVEMENT PLAN.—

6 “(A) BENCHMARKS.—A funding improve-
7 ment plan shall consist of amendments to the
8 plan formulated to provide, under reasonable
9 actuarial assumptions, for the attainment, dur-
10 ing the funding improvement period under the
11 funding improvement plan, of the following
12 benchmarks:

13 “(i) INCREASE IN FUNDED PERCENT-
14 AGE.—An increase in the plan’s funded
15 percentage such that—

16 “(I) the difference between 100
17 percent and the plan’s funded per-
18 centage for the last year of the fund-
19 ing improvement period, is not more
20 than

21 “(II) $\frac{2}{3}$ of the difference between
22 100 percent and the plan’s funded
23 percentage for the first year of the
24 funding improvement period.



1 “(ii) AVOIDANCE OF ACCUMULATED
2 FUNDING DEFICIENCIES.—No accumulated
3 funding deficiency for any plan year during
4 the funding improvement period (taking
5 into account any extension of amortization
6 periods under section 431(d)).

7 “(B) FUNDING IMPROVEMENT PERIOD.—
8 The funding improvement period for any fund-
9 ing improvement plan adopted pursuant to this
10 subsection is the 10-year period beginning on
11 the earlier of—

12 “(i) the second anniversary of the
13 date of the adoption of the funding im-
14 provement plan, or

15 “(ii) the first day of the first plan
16 year of the multiemployer plan following
17 the plan year in which occurs the first date
18 after the day of the certification as of
19 which collective bargaining agreements cov-
20 ering on the day of such certification at
21 least 75 percent of active participants in
22 such multiemployer plan have expired.

23 “(C) SPECIAL RULES FOR CERTAIN SERI-
24 OUSLY UNDERFUNDED PLANS.—



1 “(i) In the case of a plan in which the
2 funded percentage of a plan for the plan
3 year is 70 percent or less, subparagraph
4 (A)(i)(II) shall be applied by substituting
5 ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and subparagraph (B) shall be
6 applied by substituting ‘the 15-year period’
7 for ‘the 10-year period’.

8 “(ii) In the case of a plan in which
9 the funded percentage of a plan for the
10 plan year is more than 70 percent but less
11 than 80 percent, and—

12 “(I) the plan actuary certifies
13 within 30 days after certification
14 under subsection (a)(1) that the plan
15 is not able to attain the increase de-
16 scribed in subparagraph (A)(i) over
17 the period described in subparagraph
18 (B), and

19 “(II) the plan year is prior to the
20 day described in subparagraph (B)(ii),
21 subparagraph (A)(i)(II) shall be applied by
22 substituting ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and subparagraph
23 (B) shall be applied by substituting ‘the
24 15-year period’ for ‘the 10-year period’.



1 “(iii) For any plan year following the
2 year described in clause (ii)(II), subpara-
3 graph (A)(i)(II) and subparagraph (B)
4 shall apply, except that for each plan year
5 ending after such date for which the plan
6 actuary certifies (at the time of the annual
7 certification under subsection (a)(1) for
8 such plan year) that the plan is not able
9 to attain the increase described in subpara-
10 graph (A)(i) over the period described in
11 subparagraph (B), subparagraph (B) shall
12 be applied by substituting ‘the 15-year pe-
13 riod’ for ‘the 10-year period’.

14 “(D) REPORTING.—A summary of any
15 funding improvement plan or modification
16 thereto adopted during any plan year, together
17 with annual updates regarding the funding
18 ratio of the plan, shall be included in the an-
19 nual report for such plan year under section
20 104(a) of the Employee Retirement Income Se-
21 curity Act of 1974 and in the summary annual
22 report described in section 104(b)(3) of such
23 Act.

24 “(4) DEVELOPMENT OF FUNDING IMPROVE-
25 MENT PLAN.—



1 “(A) ACTIONS BY PLAN SPONSOR PENDING
2 APPROVAL.—Pending the approval of a funding
3 improvement plan under this paragraph, the
4 plan sponsor shall take all reasonable actions,
5 consistent with the terms of the plan and appli-
6 cable law, necessary to ensure—

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 Such actions include applications for extensions
13 of amortization periods under section 431(d),
14 use of the shortfall funding method in making
15 funding standard account computations,
16 amendments to the plan’s benefit structure, re-
17 ductions in future benefit accruals, and other
18 reasonable actions consistent with the terms of
19 the plan and applicable law.

20 “(B) RECOMMENDATIONS BY PLAN SPON-
21 SOR.—

22 “(i) IN GENERAL.—During the period
23 of 90 days following the date on which a
24 multiemployer plan is certified to be in en-
25 dangered status, the plan sponsor shall de-



1 velop and provide to the bargaining parties
2 alternative proposals for revised benefit
3 structures, contribution structures, or
4 both, which, if adopted as amendments to
5 the plan, may be reasonably expected to
6 meet the benchmarks described in para-
7 graph (3)(A). Such proposals shall
8 include—

9 “(I) at least one proposal for re-
10 ductions in the amount of future ben-
11 efit accruals necessary to achieve the
12 benchmarks, assuming no amend-
13 ments increasing contributions under
14 the plan (other than amendments in-
15 creasing contributions necessary to
16 achieve the benchmarks after amend-
17 ments have reduced future benefit ac-
18 cruals to the maximum extent per-
19 mitted by law), and

20 “(II) at least one proposal for in-
21 creases in contributions under the
22 plan necessary to achieve the bench-
23 marks, assuming no amendments re-
24 ducing future benefit accruals under
25 the plan.



1 “(ii) REQUESTS BY BARGAINING PAR-
2 TIES.—Upon the request of any bargaining
3 party who—

4 “(I) employs at least 5 percent of
5 the active participants, or

6 “(II) represents as an employee
7 organization, for purposes of collective
8 bargaining, at least 5 percent of the
9 active participants,

10 the plan sponsor shall provide all such par-
11 ties information as to other combinations
12 of increases in contributions and reduc-
13 tions in future benefit accruals which
14 would result in achieving the benchmarks.

15 “(iii) OTHER INFORMATION.—The
16 plan sponsor may, as it deems appropriate,
17 prepare and provide the bargaining parties
18 with additional information relating to con-
19 tribution structures or benefit structures
20 or other information relevant to the fund-
21 ing improvement plan.

22 “(5) MAINTENANCE OF CONTRIBUTIONS PEND-
23 ING APPROVAL OF FUNDING IMPROVEMENT PLAN.—
24 Pending approval of a funding improvement plan by
25 the bargaining parties with respect to a multiem-



1 ployer plan, the multiemployer plan may not be
2 amended so as to provide—

3 “(A) a reduction in the level of contribu-
4 tions for participants who are not in pay status,

5 “(B) a suspension of contributions with re-
6 spect to any period of service, or

7 “(C) any new direct or indirect exclusion
8 of younger or newly hired employees from plan
9 participation.

10 “(6) BENEFIT RESTRICTIONS PENDING AP-
11 PROVAL OF FUNDING IMPROVEMENT PLAN.—Pend-
12 ing approval of a funding improvement plan by the
13 bargaining parties with respect to a multiemployer
14 plan—

15 “(A) RESTRICTIONS ON LUMP SUM AND
16 SIMILAR DISTRIBUTIONS.—In any case in which
17 the present value of a participant’s accrued
18 benefit under the plan exceeds \$5,000, such
19 benefit may not be distributed as an immediate
20 distribution or in any other accelerated form.

21 “(B) PROHIBITION ON BENEFIT IN-
22 CREASES.—

23 “(i) IN GENERAL.—No amendment of
24 the plan which increases the liabilities of
25 the plan by reason of any increase in bene-



1 fits, any change in the accrual of benefits,
2 or any change in the rate at which benefits
3 become nonforfeitable under the plan may
4 be adopted.

5 “(ii) EXCEPTION.—Clause (i) shall
6 not apply to any plan amendment which is
7 required as a condition of qualification
8 under part I of subchapter D of chapter 1
9 of subtitle A.

10 “(7) DEFAULT CRITICAL STATUS IF NO FUND-
11 ING IMPROVEMENT PLAN ADOPTED.—If no plan
12 amendment adopting a funding improvement plan
13 has been adopted by the end of the 240-day period
14 referred to in subsection (b)(1), the plan enters into
15 critical status as of the first day of the succeeding
16 plan year.

17 “(8) RESTRICTIONS UPON APPROVAL OF FUND-
18 ING IMPROVEMENT PLAN.—Upon adoption of a
19 funding improvement plan with respect to a multi-
20 employer plan, the plan may not be amended—

21 “(A) so as to be inconsistent with the
22 funding improvement plan, or

23 “(B) so as to increase future benefit accru-
24 als, unless the plan actuary certifies in advance
25 that, after taking into account the proposed in-



1 crease, the plan is reasonably expected to meet
2 the the benchmarks described in paragraph
3 (3)(A).

4 “(c) FUNDING RULES FOR MULTIEMPLOYER PLANS
5 IN CRITICAL STATUS.—

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

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

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



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

4 “(3) CRITICALITY DESCRIPTION.—For purposes
5 of paragraph (2)(B), a plan is described in this
6 paragraph if the plan is described in at least one of
7 the following subparagraphs:

8 “(A) A plan is described in this subpara-
9 graph if, as of the beginning of the current plan
10 year—

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

13 “(ii) the sum of—

14 “(I) the market value of plan as-
15 sets, plus

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



1 is less than the present value of all non-
2 forfeitable benefits for all participants and
3 beneficiaries projected to be payable under
4 the plan during the current plan year and
5 each of the 6 succeeding plan years (plus
6 administrative expenses for such plan
7 years).

8 “(B) A plan is described in this subpara-
9 graph if, as of the beginning of the current plan
10 year, the sum of—

11 “(i) the market value of plan assets,
12 plus

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

22 is less than the present value of all nonforfeit-
23 able benefits for all participants and bene-
24 ficiaries projected to be payable under the plan
25 during the current plan year and each of the 4



1 succeeding plan years (plus administrative ex-
2 penses for such plan years).

3 “(C) A plan is described in this subpara-
4 graph if—

5 “(i) as of the beginning of the current
6 plan year, the funded percentage of the
7 plan is less than 65 percent, and

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

15 “(D) A plan is described in this subpara-
16 graph if—

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

24 “(II) the present value, as of the be-
25 ginning of the current plan year, of the



1 reasonably anticipated employer and em-
2 ployee contributions for the current plan
3 year,

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

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

17 “(E) A plan is described in this subpara-
18 graph if—

19 “(i) the funded percentage of the plan
20 is greater than 65 percent for the current
21 plan year, and

22 “(ii) the plan is projected to have an
23 accumulated funding deficiency during any
24 of the succeeding 3 plan years, not taking



1 into account any extension of amortization
2 periods under section 431(d).

3 “(4) REHABILITATION PLAN.—

4 “(A) IN GENERAL.—A rehabilitation plan
5 shall consist of—

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

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

23 “(B) REHABILITATION PERIOD.—The re-
24 habilitation period for any rehabilitation plan



1 adopted pursuant to this subsection is the 10-
2 year period beginning on the earlier of—

3 “(i) the second anniversary of the
4 date of the adoption of the rehabilitation
5 plan, or

6 “(ii) the first day of the first plan
7 year of the multiemployer plan following
8 the plan year in which occurs the first
9 date, after the date of the plan’s entry into
10 critical status, as of which collective bar-
11 gaining agreements covering at least 75
12 percent of active participants in such mul-
13 tiemployer plan (determined as of such
14 date of entry) have expired.

15 “(C) REPORTING.—A summary of any re-
16 habilitation plan or modification thereto adopt-
17 ed during any plan year, together with annual
18 updates regarding the funding ratio of the plan,
19 shall be included in the annual report for such
20 plan year under section 104(a) of the Employee
21 Retirement Income Security Act of 1974 and in
22 the summary annual report described in section
23 104(b)(3).

24 “(5) DEVELOPMENT OF REHABILITATION
25 PLAN.—



1 “(A) PROPOSALS BY PLAN SPONSOR.—

2 “(i) IN GENERAL.—Within 90 days
3 after the date of entry into critical status
4 (or the date as of which the requirements
5 of subsection (b)(1) are not met with re-
6 spect to the plan), the plan sponsor shall
7 propose to all bargaining parties a range of
8 alternative schedules of increases in con-
9 tributions and reductions in future benefit
10 accruals that would serve to carry out a re-
11 habilitation plan under this subsection.

12 “(ii) PROPOSAL ASSUMING NO CON-
13 TRIBUTION INCREASES.—Such proposals
14 shall include, as one of the proposed sched-
15 ules, a schedule of those reductions in fu-
16 ture benefit accruals that would be nec-
17 essary to cause the plan to cease to be in
18 critical status if there were no further in-
19 creases in rates of contribution to the plan.

20 “(iii) PROPOSAL WHERE CONTRIBU-
21 TIONS ARE NECESSARY.—If the plan spon-
22 sor determines that the plan will not cease
23 to be in critical status during the rehabili-
24 tation period unless the plan is amended to
25 provide for an increase in contributions,



1 the plan sponsor's proposals shall include a
2 schedule of those increases in contribution
3 rates that would be necessary to cause the
4 plan to cease to be in critical status if fu-
5 ture benefit accruals were reduced to the
6 maximum extent permitted by law.

7 “(B) REQUESTS FOR ADDITIONAL SCHED-
8 ULES.—Upon the request of any bargaining
9 party who—

10 “(i) employs at least 5 percent of the
11 active participants, or

12 “(ii) represents as an employee orga-
13 nization, for purposes of collective bar-
14 gaining, at least 5 percent of active partici-
15 pants,

16 the plan sponsor shall include among the pro-
17 posed schedules such schedules of increases in
18 contributions and reductions in future benefit
19 accruals as may be specified by the bargaining
20 parties.

21 “(C) SUBSEQUENT AMENDMENTS.—Upon
22 the adoption of a schedule of increases in con-
23 tributions or reductions in future benefit accru-
24 als as part of the rehabilitation plan, the plan
25 sponsor may amend the plan thereafter to up-



1 date the schedule to adjust for any experience
2 of the plan contrary to past actuarial assump-
3 tions, except that such an amendment may be
4 made not more than once in any 3-year period.

5 “(D) ALLOCATION OF REDUCTIONS IN FU-
6 TURE BENEFIT ACCRUALS.—Any schedule con-
7 taining reductions in future benefit accruals
8 forming a part of a rehabilitation plan shall be
9 applicable with respect to any group of active
10 participants who are employed by any bar-
11 gaining party (as an employer obligated to con-
12 tribute under the plan) in proportion to the ex-
13 tent to which increases in contributions under
14 such schedule apply to such bargaining party.

15 “(E) LIMITATION ON REDUCTION IN
16 RATES OF FUTURE ACCRUALS.—Any schedule
17 proposed under this paragraph shall not reduce
18 the rate of future accruals below the lower of—

19 “(i) a monthly benefit equal to 1 per-
20 cent of the contributions required to be
21 made with respect to a participant or the
22 equivalent standard accrual rate for a par-
23 ticipant or group of participants under the
24 collective bargaining agreements in effect



1 as of the first day of the plan year in
2 which the plan enters critical status, or

3 “(ii) if lower, the accrual rate under
4 the plan on such date.

5 The equivalent standard accrual rate shall be
6 determined by the trustees based on the stand-
7 ard or average contribution base units that they
8 determine to be representative for active partici-
9 pants and such other factors as they determine
10 to be relevant.

11 “(6) MAINTENANCE OF CONTRIBUTIONS AND
12 RESTRICTIONS ON BENEFITS PENDING ADOPTION OF
13 REHABILITATION PLAN.—The rules of paragraphs
14 (5) and (6) of subsection (b) shall apply for pur-
15 poses of this subsection by substituting the term ‘re-
16 habilitation plan’ for ‘funding improvement plan’.

17 “(7) RESTRICTIONS UPON APPROVAL OF REHA-
18 BILITATION PLAN.—Upon adoption of a rehabilita-
19 tion plan with respect to a multiemployer plan, the
20 plan may not be amended—

21 “(A) so as to be inconsistent with the re-
22 habilitation plan, or

23 “(B) so as to increase future benefit accru-
24 als, unless the plan actuary certifies in advance
25 that, after taking into account the proposed in-



1 crease, the plan is reasonably expected to cease
2 to be in critical status.

3 “(8) IMPLEMENTATION OF DEFAULT SCHED-
4 ULE UPON FAILURE TO ADOPT REHABILITATION
5 PLAN.—If the plan is not amended by the end of the
6 240-day period after entry into critical status to in-
7 clude a rehabilitation plan, the plan sponsor shall
8 amend the plan to implement the schedule required
9 by paragraph (5)(A)(ii).

10 “(9) DEEMED WITHDRAWAL.—Upon the failure
11 of any employer who has an obligation to contribute
12 under the plan to make contributions in compliance
13 with the schedule adopted under paragraph (4) as
14 part of the rehabilitation plan, the failure of the em-
15 ployer may, at the discretion of the plan sponsor, be
16 treated as a withdrawal by the employer from the
17 plan under section 4203 of the Employee Retirement
18 Income Security Act of 1974 or a partial withdrawal
19 by the employer under section 4205 of such Act.

20 “(d) DEFINITIONS.—For purposes of this section—

21 “(1) BARGAINING PARTY.—The term ‘bar-
22 gaining party’ means, in connection with a multiem-
23 ployer plan—

24 “(A) an employer who has an obligation to
25 contribute under the plan, and



1 “(B) an employee organization which, for
2 purposes of collective bargaining, represents
3 plan participants employed by such an em-
4 ployer.

5 “(2) FUNDED PERCENTAGE.—The term ‘fund-
6 ed percentage’ means the percentage expressed as a
7 ratio of which—

8 “(A) the numerator of which is the value
9 of the plan’s assets, as determined under sec-
10 tion 431(c)(2), and

11 “(B) the denominator of which is the ac-
12 crued liability of the plan.

13 “(3) ACCUMULATED FUNDING DEFICIENCY.—
14 The term ‘accumulated funding deficiency’ has the
15 meaning provided such term in section 431(a).

16 “(4) ACTIVE PARTICIPANT.—The term ‘active
17 participant’ means, in connection with a multiem-
18 ployer plan, a participant who is in covered service
19 under the plan.

20 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
21 tive participant’ means, in connection with a multi-
22 employer plan, a participant who—

23 “(A) is not in covered service under the
24 plan, and



1 “(B) is in pay status under the plan or has
2 a nonforfeitable right to benefits under the
3 plan.

4 “(6) PAY STATUS.—A person is in ‘pay status’
5 under a multiemployer plan if—

6 “(A) at any time during the current plan
7 year, such person is a participant or beneficiary
8 under the plan and is paid an early, late, nor-
9 mal, or disability retirement benefit under the
10 plan (or a death benefit under the plan related
11 to a retirement benefit), or

12 “(B) to the extent provided in regulations
13 of the Secretary, such person is entitled to such
14 a benefit under the plan.

15 “(7) OBLIGATION TO CONTRIBUTE.—The term
16 ‘obligation to contribute’ has the meaning provided
17 such term under section 4212(a) of the Employee
18 Retirement Income Security Act of 1974.

19 “(8) ENTRY INTO CRITICAL STATUS.—A plan
20 shall be treated as entering into critical status as of
21 the date that such plan is certified to be in critical
22 status under subsection (a)(1), is presumed to be in
23 critical status under subsection (a)(3), or enters into
24 critical status under subsection (b)(7).”.



1 (b) CLERICAL AMENDMENT.—The table of sections
2 for subpart A of part III of subchapter D of chapter 1
3 of such Code is amended by adding at the end the fol-
4 lowing new item:

“Sec. 432. Additional funding rules for multiemployer plans in endangered sta-
tus or critical status.”.

5 (c) EFFECTIVE DATE.—The amendment made by
6 this section shall apply with respect to plan years begin-
7 ning after December 31, 2005.

8 (d) SPECIAL RULE FOR 2006.—In the case of any
9 plan year beginning in 2006, any reference in section 432
10 of the Internal Revenue Code of 1986 (as added by this
11 section) to section 431 of such Code (as added by this
12 Act) shall be treated as a reference to the corresponding
13 provision of such Code as in effect for plan years begin-
14 ning in such year.

15 **SEC. 213. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
16 **TIEMPLOYER PLANS.**

17 (a) ADVANCE DETERMINATION OF IMPENDING IN-
18 SOLVENCY OVER 5 YEARS.—Section 418E(d)(1) of the
19 Internal Revenue Code of 1986 is amended—

20 (1) by striking “3 plan years” the second place
21 it appears and inserting “5 plan years”, and

22 (2) by adding at the end the following new sen-
23 tence: “If the plan sponsor makes such a determina-
24 tion that the plan will be insolvent in any of the next



1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2005.

4 **SEC. 302. INTEREST RATE ASSUMPTION FOR DETERMINA-**
5 **TION OF LUMP SUM DISTRIBUTIONS.**

6 (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
7 COME SECURITY ACT OF 1974.—[See section 301(a) of
8 the bill as reported by the Committee on Education and
9 the Workforce.]

10 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
11 1986.—Section 417(e)(3)(A) of the Internal Revenue
12 Code of 1986 is amended by striking clause (ii) and insert-
13 ing the following:

14 “(ii) For purposes of clause (i), the
15 term ‘applicable mortality table’ means a
16 mortality table, modified as appropriate by
17 the Secretary, based on the mortality table
18 specified for the plan year under section
19 430(h)(3).

20 “(iii) For purposes of clause (i), the
21 term ‘applicable interest rate’ means the
22 adjusted first, second, and third segment
23 rates applied under rules similar to the
24 rules of section 430(h)(2)(C) for the
25 month before the date of the distribution



1 or such other time as the Secretary may by
2 regulations prescribe.

3 “(iv) For purposes of clause (iii), the
4 adjusted first, second, and third segment
5 rates are the first, second, and third seg-
6 ment rates which would be determined
7 under section 430(h)(2)(C) if—

8 “(I) section 430(h)(2)(D)(i) were
9 applied by substituting ‘the yields’ for
10 ‘a 3-year weighted average of yields’,

11 “(II) section 430(h)(2)(G)(i)(II)
12 were applied by substituting ‘section
13 417(e)(3)(A)(ii)(II)’ for ‘section
14 412(b)(5)(B)(ii)(II)’, and

15 “(III) the applicable percentage
16 under section 430(h)(2)(G) were de-
17 termined in accordance with the fol-
18 lowing table:

“In the case of plan years beginning in:	The applicable percentage is:
2007	20 percent
2008	40 percent
2009	60 percent
2010	80 percent.”.

19 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
20 plan shall not fail to meet the requirements of section
21 411(d)(6) of the Internal Revenue Code of 1986 or section



1 204(g) of the Employee Retirement Income Security Act
2 of 1974 solely by reason of the adoption by the plan of
3 an amendment necessary to meet the requirements of the
4 amendments made by this section.

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall apply with respect to plan years begin-
7 ning after December 31, 2006.

8 **SEC. 303. INTEREST RATE ASSUMPTION FOR APPLYING**
9 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**
10 **TRIBUTIONS.**

11 (a) IN GENERAL.—Clause (ii) of section
12 415(b)(2)(E) of the Internal Revenue Code of 1986 is
13 amended to read as follows:

14 “(ii) For purposes of adjusting any
15 benefit under subparagraph (B) for any
16 form of benefit subject to section
17 417(e)(3), the interest rate assumption
18 shall not be less than the greater of—

19 “(I) 5.5 percent,

20 “(II) the rate that provides a
21 benefit of not more than 105 percent
22 of the benefit that would be provided
23 if the applicable interest rate (as de-
24 fined in section 417(e)(3)) were the
25 interest rate assumption, or



1 “(III) the rate specified under
2 the plan.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply to distributions made in years
5 beginning after December 31, 2005.

6 **SEC. 304. DISTRIBUTIONS DURING WORKING RETIREMENT.**

7 (a) **AMENDMENT TO THE EMPLOYEE RETIREMENT**
8 **INCOME SECURITY ACT OF 1974.**—[See section 303(a) of
9 the bill as reported by the Committee on Education and
10 the Workforce.]

11 (b) **AMENDMENT TO THE INTERNAL REVENUE CODE**
12 **OF 1986.**—Subsection (a) of section 401 of the Internal
13 Revenue Code of 1986 is amended by inserting after para-
14 graph (34) the following new paragraph:

15 “(35) **DISTRIBUTIONS DURING RE-**
16 **TIREMENT.**—A trust forming part of a pension plan
17 shall not be treated as failing to constitute a quali-
18 fied trust under this section solely because a dis-
19 tribution is made from such trust to an employee
20 who has attained age 62 and who is not separated
21 from employment at the time of such distribution.”.

22 (c) **EFFECTIVE DATE.**—The amendments made by
23 this section shall apply to distributions in plan years be-
24 ginning after December 31, 2005.



1 **SEC. 305. OTHER AMENDMENTS RELATING TO PROHIBITED**
2 **TRANSACTIONS.**

3 [See section 304 of the bill as reported by the Com-
4 mittee on Education and the Workforce.]

5 **SEC. 306. CORRECTION PERIOD FOR CERTAIN TRANS-**
6 **ACTIONS INVOLVING SECURITIES AND COM-**
7 **MODITIES.**

8 [See section 305 of the bill as reported by the Com-
9 mittee on Education and the Workforce.]

10 **SEC. 307. GOVERNMENT ACCOUNTABILITY OFFICE PEN-**
11 **SION FUNDING REPORT.**

12 [See section 306 of the bill as reported by the Com-
13 mittee on Education and the Workforce.]

14 **TITLE IV—IMPROVEMENTS IN**
15 **PBGC GUARANTEE PROVISIONS**

16 **SEC. 401. INCREASES IN PBGC PREMIUMS.**

17 (a) **FLAT-RATE PREMIUMS.**—Section 4006(a)(3) of
18 the Employee Retirement Income Security Act of 1974
19 (29 U.S.C. 1306(a)(3)) is amended—

20 (1) by striking clause (i) of subparagraph (A)
21 and inserting the following:

22 “(i) in the case of a single-employer plan, an
23 amount equal to—

24 “(I) for plan years beginning after Decem-
25 ber 31, 1990, and before January 1, 2006, \$19,
26 or



1 “(II) for plan years beginning after De-
2 cember 31, 2005, the amount determined under
3 subparagraph (F),
4 plus the additional premium (if any) determined
5 under subparagraph (E) for each individual who is
6 a participant in such plan during the plan year;”;
7 and

8 (2) by adding at the end the following new sub-
9 paragraph:

10 “(F)(i) Except as otherwise provided in this subpara-
11 graph, for purposes of determining the annual premium
12 rate payable to the corporation by a single-employer plan
13 for basic benefits guaranteed under this title, the amount
14 determined under this subparagraph is the greater of \$30
15 or the adjusted amount determined under clause (ii).

16 “(ii) For plan years beginning after 2006, the ad-
17 justed amount determined under this clause is the product
18 derived by multiplying \$30 by the ratio of—

19 “(I) the national average wage index (as de-
20 fined in section 209(k)(1) of the Social Security Act)
21 for the first of the 2 calendar years preceding the
22 calendar year in which the plan year begins, to

23 “(II) the national average wage index (as so de-
24 fined) for 2004,



1 with such product, if not a multiple of \$1, being rounded
 2 to the next higher multiple of \$1 where such product is
 3 a multiple of \$0.50 but not of \$1, and to the nearest mul-
 4 tiple of \$1 in any other case.

5 “(iii) For purposes of determining the annual pre-
 6 mium rate payable to the corporation by a single-employer
 7 plan for basic benefits guaranteed under this title for any
 8 plan year beginning after 2005 and before 2010—

9 “(I) except as provided in subelause (II), the
 10 premium amount referred to in subparagraph
 11 (A)(i)(II) for any such plan year is the amount set
 12 forth in connection with such plan year in the fol-
 13 lowing table:

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

14 “(II) if the plan’s funding target attainment
 15 percentage for the plan year preceding the current
 16 plan year was less than 80 percent, the premium
 17 amount referred to in subparagraph (A)(i)(II) for
 18 such current plan year is the amount set forth in
 19 connection with such current plan year in the fol-
 20 lowing table:



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

1 “(iv) For purposes of this subparagraph, the term
2 ‘funding target attainment percentage’ has the meaning
3 provided such term in section 303(d)(2).”.

4 (b) PREMIUM RATE FOR CERTAIN TERMINATED SIN-
5 GLE-EMPLOYER PLANS.—Subsection (a) of section 4006
6 of such Act (29 U.S.C. 1306) is amended by adding at
7 the end the following:

8 “(7) PREMIUM RATE FOR CERTAIN TERMINATED
9 SINGLE-EMPLOYER PLANS.—

10 “(A) IN GENERAL.—If there is a termination of
11 a single-employer plan under clause (ii) or (iii) of
12 section 4041(c)(2)(B) or section 4042, there shall be
13 payable to the corporation, with respect to each ap-
14 plicable 12-month period, a premium at a rate equal
15 to \$1,250 multiplied by the number of individuals
16 who were participants in the plan immediately before
17 the termination date. Such premium shall be in ad-
18 dition to any other premium under this section.

19 “(B) SPECIAL RULE FOR PLANS TERMINATED
20 IN BANKRUPTCY REORGANIZATION.—If the plan is
21 terminated under 4041(c)(2)(B)(ii) or under section
22 4042 and, as of the termination date, a person who



1 is (as of such date) a contributing sponsor of the
2 plan or a member of such sponsor's controlled group
3 has filed or has had filed against such person a peti-
4 tion seeking reorganization in a case under title 11
5 of the United States Code, or under any similar law
6 of a State or a political subdivision of a State (or
7 a case described in section 4041(c)(2)(B)(i) filed by
8 or against such person has been converted, as of
9 such date, to such a case in which reorganization is
10 sought), subparagraph (A) shall not apply to such
11 plan until the date of the discharge of such person
12 in such case.

13 “(C) APPLICABLE 12-MONTH PERIOD.—For
14 purposes of subparagraph (A)—

15 “(i) IN GENERAL.—The term ‘applicable
16 12-month period’ means—

17 “(I) the 12-month period beginning
18 with the first month following the month
19 in which the termination date occurs, and

20 “(II) each of the first two 12-month
21 periods immediately following the period
22 described in subclause (I).

23 “(ii) PLANS TERMINATED IN BANKRUPTCY
24 REORGANIZATION.—In any case in which the
25 requirements of subparagraph (B) are met in



1 connection with the termination of the plan
2 with respect to 1 or more persons described in
3 such subparagraph, the 12-month period de-
4 scribed in clause (i)(I) shall be the 12-month
5 period beginning with the first month following
6 the month which includes the earliest date as of
7 which each such person is discharged in the
8 case described in such clause in connection with
9 such person.

10 “(D) COORDINATION WITH SECTION 4007.—

11 “(i) Notwithstanding section 4007—

12 “(I) premiums under this paragraph
13 shall be due within 30 days after the be-
14 ginning of any applicable 12-month period,
15 and

16 “(II) the designated payor shall be the
17 person who is the contributing sponsor as
18 of immediately before the termination date.

19 “(ii) The fifth sentence of section 4007(a)
20 shall not apply in connection with premiums de-
21 termined under this paragraph.”.

22 (c) RISK-BASED PREMIUMS.—

23 (1) EXTENSION THROUGH 2006.—Section
24 4006(a)(3)(E)(iii)(V) of such Act is amended by



1 striking “January 1, 2006” and inserting “January
2 1, 2007”.

3 (2) CONFORMING AMENDMENTS RELATED TO
4 FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—
5 Section 4006(a)(3)(E) of such Act is amended by
6 striking clauses (iii) and (iv) and inserting the fol-
7 lowing:

8 “(iii)(I) For purposes of clause (ii), except as pro-
9 vided in subclause (II), the term ‘unfunded vested bene-
10 fits’ means, for a plan year, the amount which would be
11 the plan’s funding shortfall (as defined in section
12 303(c)(4)), if the value of plan assets of the plan were
13 equal to the fair market value of such assets and only vest-
14 ed benefits were taken into account.

15 “(II) The interest rate used in valuing vested benefits
16 for purposes of subclause (I) shall be equal to the first,
17 second, or third segment rate which would be determined
18 under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were
19 applied by substituting ‘the yields’ for ‘the 3-year weighted
20 average of yields’, as applicable under rules similar to the
21 rules under section 303(h)(2)(B).”.

22 (d) EFFECTIVE DATES.—

23 (1) IN GENERAL.—The amendments made by
24 subsection (a) and (c)(1) shall apply to plan years
25 beginning after December 31, 2005.



1 (2) PREMIUM RATE FOR CERTAIN TERMINATED
2 SINGLE-EMPLOYER PLANS.—The amendment made
3 by subsection (b) shall apply with respect to cases
4 commenced under title 11, United States Code, or
5 under any similar law of a State or political subdivi-
6 sion of a State after October 26, 2005.

7 (3) CONFORMING AMENDMENTS RELATED TO
8 FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—
9 The amendments made by subsection (c)(2) shall
10 take effect on December 31, 2006, and shall apply
11 to plan years beginning after such date.

12 **TITLE V—DISCLOSURE**

13 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.**

14 [See section 501 of the bill as reported by the Com-
15 mittee on Education and the Workforce.]

16 **SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.**

17 [See section 502 of the bill as reported by the Com-
18 mittee on Education and the Workforce.]

19 **SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.**

20 (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED
21 TO PROVIDE INFORMATION TO PBGC.—Section 4010(b)
22 of the Employee Retirement Income Security Act of 1974
23 (29 U.S.C. 1310(b)) is amended by striking paragraph
24 (1), by redesignating paragraphs (2) and (3) as para-
25 graphs (3) and (4), respectively, and by inserting before



1 paragraph (3) (as so redesignated) the following new para-
2 graphs:

3 “(1) the aggregate funding target attainment
4 percentage of the plan (as defined in subsection
5 (d)(2)) is less than 60 percent;

6 “(2)(A) the aggregate funding target attain-
7 ment percentage of the plan (as defined in sub-
8 section (d)(2)) is less than 75 percent, and

9 “(B) the plan sponsor is in an industry with re-
10 spect to which the corporation determines that there
11 is substantial unemployment or underemployment
12 and the sales and profits are depressed or declining;
13 ”.

14 (b) NOTICE TO PARTICIPANTS AND BENE-
15 FICIARIES.—Section 4010 of the Employee Retirement In-
16 come Security Act of 1974 (29 U.S.C. 1310) is amended
17 by adding at the end the following new subsection:

18 “(d) NOTICE TO PARTICIPANTS AND BENE-
19 FICIARIES.—

20 “(1) IN GENERAL.—Not later than 90 days
21 after the submission by any person to the corpora-
22 tion of information or documentary material with re-
23 spect to any plan pursuant to subsection (a), such
24 person shall provide notice of such submission to
25 each participant and beneficiary under the plan (and



1 under all plans maintained by members of the con-
2 trolled group of each contributing sponsor of the
3 plan). Such notice shall also set forth—

4 “(A) the number of single-employer plans
5 covered by this title which are in at-risk status
6 and are maintained by contributing sponsors of
7 such plan (and by members of their controlled
8 groups) with respect to which the funding tar-
9 get attainment percentage for the preceding
10 plan year of each plan is less than 60 percent;

11 “(B) the value of the assets of each of the
12 plans described in subparagraph (A) for the
13 plan year, the funding target for each of such
14 plans for the plan year, and the funding target
15 attainment percentage of each of such plans for
16 the plan year; and

17 “(C) taking into account all single-em-
18 ployer plans maintained by the contributing
19 sponsor and the members of its controlled
20 group as of the end of such plan year—

21 “(i) the aggregate total of the values
22 of plan assets of such plans as of the end
23 of such plan year,

24 “(ii) the aggregate total of the fund-
25 ing targets of such plans, as of the end of



1 such plan year, taking into account only
2 benefits to which participants and bene-
3 ficiaries have a nonforfeitable right, and

4 “(iii) the aggregate funding targets
5 attainment percentage with respect to the
6 contributing sponsor for the preceding plan
7 year.

8 “(2) DEFINITIONS.—For purposes of this
9 subsection—

10 “(A) VALUE OF PLAN ASSETS.—The term
11 ‘value of plan assets’ means the value of plan
12 assets, as determined under section 303(g)(3).

13 “(B) FUNDING TARGET.—The term ‘fund-
14 ing target’ has the meaning provided under sec-
15 tion 303(d)(1).

16 “(C) FUNDING TARGET ATTAINMENT PER-
17 CENTAGE.—The term ‘funding target attain-
18 ment percentage’ has the meaning provided in
19 section 303(d)(2).

20 “(D) AGGREGATE FUNDING TARGETS AT-
21 TAINMENT PERCENTAGE.—The term ‘aggregate
22 funding targets attainment percentage’ with re-
23 spect to a contributing sponsor for a plan year
24 is the percentage, taking into account all plans
25 maintained by the contributing sponsor and the



1 members of its controlled group as of the end
2 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)(3).

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 such notice may make a reasonable charge to
2 cover copying, mailing, and other costs of fur-
3 nishing such notice pursuant to paragraph (1).
4 The corporation may by regulations prescribe
5 the maximum amount which will constitute a
6 reasonable charge under the preceding sentence.

7 “(4) NOTICE TO CONGRESS.—Concurrent with
8 the provision of any notice under paragraph (1),
9 such person shall provide such notice to the Com-
10 mittee on Education and the Workforce and the
11 Committee on Ways and Means of the House of
12 Representatives and the Committee on Health, Edu-
13 cation, Labor, and Pensions and the Committee on
14 Finance of the Senate, which shall be treated as ma-
15 terials provided in executive session.”.

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

19 **TITLE VI—INVESTMENT ADVICE**

20 **SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT IN-** 21 **COME SECURITY ACT OF 1974 PROVIDING** 22 **PROHIBITED TRANSACTION EXEMPTION FOR** 23 **PROVISION OF INVESTMENT ADVICE.**

24 [See section 601 of the bill as reported by the Com-
25 mittee on Education and the Workforce.]



1 **SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF**
2 **1986 PROVIDING PROHIBITED TRANSACTION**
3 **EXEMPTION FOR PROVISION OF INVESTMENT**
4 **ADVICE.**

5 (a) EXEMPTION FROM PROHIBITED TRANS-
6 ACTIONS.—Subsection (d) of section 4975 of the Internal
7 Revenue Code of 1986 (relating to exemptions from tax
8 on prohibited transactions) is amended—

9 (1) in paragraph (14), by striking “or” at the
10 end;

11 (2) in paragraph (15), by striking the period at
12 the end and inserting “; or”; and

13 (3) by adding at the end the following new
14 paragraph:

15 “(16) any transaction described in subsection
16 (f)(7)(A) in connection with the provision of invest-
17 ment advice described in subsection (e)(3)(B)(i), in
18 any case in which—

19 “(A) the investment of assets of the plan
20 is subject to the direction of plan participants
21 or beneficiaries,

22 “(B) the advice is provided to the plan or
23 a participant or beneficiary of the plan by a fi-
24 duciary adviser in connection with any sale, ac-
25 quisition, or holding of a security or other prop-



1 erty for purposes of investment of plan assets,
2 and

3 “(C) the requirements of subsection
4 (f)(7)(B) are met in connection with the provi-
5 sion of the advice.”.

6 (b) ALLOWED TRANSACTIONS AND REQUIRE-
7 MENTS.—Subsection (f) of such section 4975 (relating to
8 other definitions and special rules) is amended by adding
9 at the end the following new paragraph:

10 “(7) PROVISIONS RELATING TO INVESTMENT
11 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

12 “(A) TRANSACTIONS ALLOWABLE IN CON-
13 NECTION WITH INVESTMENT ADVICE PROVIDED
14 BY FIDUCIARY ADVISERS.—The transactions re-
15 ferred to in subsection (d)(16), in connection
16 with the provision of investment advice by a fi-
17 duciary adviser, are the following:

18 “(i) the provision of the advice to the
19 plan, participant, or beneficiary;

20 “(ii) the sale, acquisition, or holding
21 of a security or other property (including
22 any lending of money or other extension of
23 credit associated with the sale, acquisition,
24 or holding of a security or other property)
25 pursuant to the advice; and



1 “(iii) the direct or indirect receipt of
2 fees or other compensation by the fiduciary
3 adviser or an affiliate thereof (or any em-
4 ployee, agent, or registered representative
5 of the fiduciary adviser or affiliate) in con-
6 nection with the provision of the advice or
7 in connection with a sale, acquisition, or
8 holding of a security or other property pur-
9 suant to the advice.

10 “(B) REQUIREMENTS RELATING TO PROVI-
11 SION OF INVESTMENT ADVICE BY FIDUCIARY
12 ADVISERS.—The requirements of this subpara-
13 graph (referred to in subsection (d)(16)(C)) are
14 met in connection with the provision of invest-
15 ment advice referred to in subsection (e)(3)(B),
16 provided to a plan or a participant or bene-
17 ficiary of a plan by a fiduciary adviser with re-
18 spect to the plan in connection with any sale,
19 acquisition, or holding of a security or other
20 property for purposes of investment of amounts
21 held by the plan, if—

22 “(i) in the case of the initial provision
23 of the advice with regard to the security or
24 other property by the fiduciary adviser to
25 the plan, participant, or beneficiary, the fi-



1 duciary adviser provides to the recipient of
2 the advice, at a time reasonably contem-
3 poraneous with the initial provision of the
4 advice, a written notification (which may
5 consist of notification by means of elec-
6 tronic communication)—

7 “(I) of all fees or other com-
8 pensation relating to the advice that
9 the fiduciary adviser or any affiliate
10 thereof is to receive (including com-
11 pensation provided by any third
12 party) in connection with the provi-
13 sion of the advice or in connection
14 with the sale, acquisition, or holding
15 of the security or other property,

16 “(II) of any material affiliation
17 or contractual relationship of the fidu-
18 ciary adviser or affiliates thereof in
19 the security or other property,

20 “(III) of any limitation placed on
21 the scope of the investment advice to
22 be provided by the fiduciary adviser
23 with respect to any such sale, acquisi-
24 tion, or holding of a security or other
25 property,



1 “(IV) of the types of services
2 provided by the fiduciary adviser in
3 connection with the provision of in-
4 vestment advice by the fiduciary ad-
5 viser,

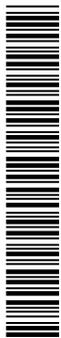
6 “(V) that the adviser is acting as
7 a fiduciary of the plan in connection
8 with the provision of the advice, and

9 “(VI) that a recipient of the ad-
10 vice may separately arrange for the
11 provision of advice by another adviser,
12 that could have no material affiliation
13 with and receive no fees or other com-
14 pensation in connection with the secu-
15 rity or other property,

16 “(ii) the fiduciary adviser provides ap-
17 propriate disclosure, in connection with the
18 sale, acquisition, or holding of the security
19 or other property, in accordance with all
20 applicable securities laws,

21 “(iii) the sale, acquisition, or holding
22 occurs solely at the direction of the recipi-
23 ent of the advice,

24 “(iv) the compensation received by the
25 fiduciary adviser and affiliates thereof in



1 connection with the sale, acquisition, or
2 holding of the security or other property is
3 reasonable, and

4 “(v) the terms of the sale, acquisition,
5 or holding of the security or other property
6 are at least as favorable to the plan as an
7 arm’s length transaction would be.

8 “(C) STANDARDS FOR PRESENTATION OF
9 INFORMATION.—The notification required to be
10 provided to participants and beneficiaries under
11 subparagraph (B)(i) shall be written in a clear
12 and conspicuous manner and in a manner cal-
13 culated to be understood by the average plan
14 participant and shall be sufficiently accurate
15 and comprehensive to reasonably apprise such
16 participants and beneficiaries of the information
17 required to be provided in the notification.

18 “(D) EXEMPTION CONDITIONED ON MAK-
19 ING REQUIRED INFORMATION AVAILABLE ANNU-
20 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
21 TERIAL CHANGE.—The requirements of sub-
22 paragraph (B)(i) shall be deemed not to have
23 been met in connection with the initial or any
24 subsequent provision of advice described in sub-
25 paragraph (B) to the plan, participant, or bene-



1 fiiciary if, at any time during the provision of
2 advisory services to the plan, participant, or
3 beneficiary, the fiduciary adviser fails to main-
4 tain the information described in subclauses (I)
5 through (IV) of subparagraph (B)(i) in cur-
6 rently accurate form and in the manner re-
7 quired by subparagraph (C), or fails—

8 “(i) to provide, without charge, such
9 currently accurate information to the re-
10 cipient of the advice no less than annually,

11 “(ii) to make such currently accurate
12 information available, upon request and
13 without charge, to the recipient of the ad-
14 vice, or

15 “(iii) in the event of a material
16 change to the information described in
17 subclauses (I) through (IV) of subpara-
18 graph (B)(i), to provide, without charge,
19 such currently accurate information to the
20 recipient of the advice at a time reasonably
21 contemporaneous to the material change in
22 information.

23 “(E) MAINTENANCE FOR 6 YEARS OF EVI-
24 DENCE OF COMPLIANCE.—A fiduciary adviser
25 referred to in subparagraph (B) who has pro-



1 vided advice referred to in such subparagraph
2 shall, for a period of not less than 6 years after
3 the provision of the advice, maintain any
4 records necessary for determining whether the
5 requirements of the preceding provisions of this
6 paragraph and of subsection (d)(16) have been
7 met. A transaction prohibited under subsection
8 (c)(1) shall not be considered to have occurred
9 solely because the records are lost or destroyed
10 prior to the end of the 6-year period due to cir-
11 cumstances beyond the control of the fiduciary
12 adviser.

13 “(F) EXEMPTION FOR PLAN SPONSOR AND
14 CERTAIN OTHER FIDUCIARIES.—A plan sponsor
15 or other person who is a fiduciary (other than
16 a fiduciary adviser) shall not be treated as fail-
17 ing to meet the requirements of this section
18 solely by reason of the provision of investment
19 advice referred to in subsection (e)(3)(B) (or
20 solely by reason of contracting for or otherwise
21 arranging for the provision of the advice), if—

22 “(i) the advice is provided by a fidu-
23 ciary adviser pursuant to an arrangement
24 between the plan sponsor or other fidu-
25 ciary and the fiduciary adviser for the pro-



1 vision by the fiduciary adviser of invest-
2 ment advice referred to in such section,

3 “(ii) the terms of the arrangement re-
4 quire compliance by the fiduciary adviser
5 with the requirements of this paragraph,

6 “(iii) the terms of the arrangement
7 include a written acknowledgment by the
8 fiduciary adviser that the fiduciary adviser
9 is a fiduciary of the plan with respect to
10 the provision of the advice, and

11 “(iv) the requirements of part 4 of
12 subtitle B of title I of the Employee Re-
13 tirement Income Security Act of 1974 are
14 met in connection with the provision of
15 such advice.

16 “(G) DEFINITIONS.—For purposes of this
17 paragraph and subsection (d)(16)—

18 “(i) FIDUCIARY ADVISER.—The term
19 ‘fiduciary adviser’ means, with respect to a
20 plan, a person who is a fiduciary of the
21 plan by reason of the provision of invest-
22 ment advice by the person to the plan or
23 to a participant or beneficiary and who
24 is—

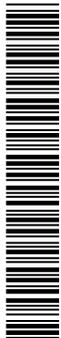


1 “(I) registered as an investment
2 adviser under the Investment Advisers
3 Act of 1940 (15 U.S.C. 80b–1 et seq.)
4 or under the laws of the State in
5 which the fiduciary maintains its prin-
6 cipal office and place of business,

7 “(II) a bank or similar financial
8 institution referred to in subsection
9 (d)(4) or a savings association (as de-
10 fined in section 3(b)(1) of the Federal
11 Deposit Insurance Act (12 U.S.C.
12 1813(b)(1))), but only if the advice is
13 provided through a trust department
14 of the bank or similar financial insti-
15 tution or savings association which is
16 subject to periodic examination and
17 review by Federal or State banking
18 authorities,

19 “(III) an insurance company
20 qualified to do business under the
21 laws of a State,

22 “(IV) a person registered as a
23 broker or dealer under the Securities
24 Exchange Act of 1934 (15 U.S.C. 78a
25 et seq.),



1 “(V) an affiliate of a person de-
2 scribed in any of subclauses (I)
3 through (IV), or

4 “(VI) an employee, agent, or reg-
5 istered representative of a person de-
6 scribed in any of subclauses (I)
7 through (V) who satisfies the require-
8 ments of applicable insurance, bank-
9 ing, and securities laws relating to the
10 provision of the advice.

11 “(ii) AFFILIATE.—The term ‘affiliate’
12 of another entity means an affiliated per-
13 son of the entity (as defined in section
14 2(a)(3) of the Investment Company Act of
15 1940 (15 U.S.C. 80a-2(a)(3))).

16 “(iii) REGISTERED REPRESENTA-
17 TIVE.—The term ‘registered representa-
18 tive’ of another entity means a person de-
19 scribed in section 3(a)(18) of the Securi-
20 ties Exchange Act of 1934 (15 U.S.C.
21 78c(a)(18)) (substituting the entity for the
22 broker or dealer referred to in such sec-
23 tion) or a person described in section
24 202(a)(17) of the Investment Advisers Act
25 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-



1 requirements of clause (i) if a partici-
2 pant's entire accrued benefit, as deter-
3 mined as of any date under the for-
4 mula for determining benefits as set
5 forth in the text of the plan docu-
6 ments, would be equal to or greater
7 than that of any similarly situated,
8 younger individual.

9 “(II) SIMILARLY SITUATED.—
10 For purposes of this clause, an indi-
11 vidual is similarly situated to a partici-
12 pant if such individual is identical to
13 such participant in every respect (in-
14 cluding period of service, compensa-
15 tion, position, date of hire, work his-
16 tory, and any other respect) except for
17 age.

18 “(III) DISREGARD OF SUB-
19 SIDIZED EARLY RETIREMENT BENE-
20 FITS.—In determining the entire ac-
21 crued benefit for purposes of this
22 clause, the subsidized portion of any
23 early retirement benefit (including any
24 early retirement subsidy that is fully
25 or partially included or reflected in an



1 employee's opening balance or other
2 transition benefits) shall be dis-
3 regarded.

4 “(vii) INTEREST ON HYPOTHETICAL
5 ACCOUNTS.—A plan under which the ac-
6 crued benefit payable under the plan upon
7 distribution (or any portion thereof) is ex-
8 pressed as the balance of a hypothetical ac-
9 count maintained for the participant shall
10 not be treated as failing to meet the re-
11 quirements of clause (i) solely because in-
12 terest accruing on such balance is taken
13 into account.

14 “(viii) CERTAIN OFFSETS PER-
15 MITTED.—A plan shall not be treated as
16 failing to meet the requirements of this
17 subparagraph solely because the plan pro-
18 vides allowable offsets against those bene-
19 fits under the plan which are attributable
20 to employer contributions, based on bene-
21 fits which are provided under title II of the
22 Social Security Act, the Railroad Retire-
23 ment Act of 1974, another plan described
24 in section 401(a) maintained by the same
25 employer, or under any retirement pro-



1 gram for officers or employees of the Fed-
2 eral Government or of the government of
3 any State or political subdivision thereof.
4 For purposes of this clause, allowable off-
5 sets based on such benefits consist of off-
6 sets equal to all or part of the actual ben-
7 efit payment amounts, reasonable projec-
8 tions or estimations of such benefit pay-
9 ment amounts, or actuarial equivalents of
10 such actual benefit payment amounts, pro-
11 jections, or estimations (determined on the
12 basis of reasonable actuarial assumptions).

13 “(ix) PERMITTED DISPARITIES IN
14 PLAN CONTRIBUTIONS OR BENEFITS.—A
15 plan shall not be treated as failing to meet
16 the requirements of this subparagraph
17 solely because the plan provides a disparity
18 in contributions or benefits with respect to
19 which the requirements of section 401(l)
20 are met.

21 “(x) PRE-RETIREMENT INDEXING
22 PERMITTED.—

23 “(I) IN GENERAL.—A plan shall
24 not be treated as failing to meet the
25 requirements of this subparagraph



1 solely because the plan provides for
2 pre-retirement indexing of accrued
3 benefits under the plan.

4 “(II) PRE-RETIREMENT INDEX-
5 ING.—For purposes of this clause, the
6 term ‘pre-retirement indexing’ means,
7 in connection with an accrued benefit,
8 the periodic adjustment of the accrued
9 benefit by means of the application of
10 a recognized index or methodology so
11 as to protect the economic value of
12 the benefit against inflation prior to
13 distribution.”.

14 (2) DETERMINATIONS OF ACCRUED BENEFIT AS
15 BALANCE OF BENEFIT ACCOUNT.—Subsection (a) of
16 section 411 of such Code is amended by adding at
17 the end the following new paragraph:

18 “(13) DETERMINATIONS OF ACCRUED BENEFIT
19 AS BALANCE OF BENEFIT ACCOUNT.—

20 “(A) IN GENERAL.—A defined benefit plan
21 under which the accrued benefit payable under
22 the plan upon distribution (or any portion
23 thereof) is expressed as the balance of a hypo-
24 thetical account maintained for the participant
25 shall not be treated as failing to meet the re-



1 requirements of subsection (a)(2) and section
2 417(e) solely because of the amount actually
3 made available for such distribution under the
4 terms of the plan, in any case in which the ap-
5 plicable interest rate that would be used under
6 the terms of the plan to project the amount of
7 the participant's account balance to normal re-
8 tirement age is not greater than a market rate
9 of return.

10 “(B) REGULATIONS.—The Secretary may
11 provide by regulation for rules governing the
12 calculation of a market rate of return for pur-
13 poses of subparagraph (A) and for permissible
14 methods of crediting interest to the account (in-
15 cluding variable interest rates) resulting in ef-
16 fective rates of return meeting the requirements
17 of subparagraph (A).”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to periods beginning on or after
20 June 29, 2005.

21 **TITLE VIII—DEDUCTION** 22 **LIMITATIONS**

23 **SEC. 801. INCREASE IN DEDUCTION LIMITS.**

24 (a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-
25 EMPLOYER PLANS.—Section 404 of the Internal Revenue



1 Code of 1986 (relating to deduction for contributions of
2 an employer to an employees' trust or annuity plan and
3 compensation under a deferred payment plan) is
4 amended—

5 (1) in subsection (a)(1)(A), by inserting “in the
6 case of a defined benefit plan other than a multiem-
7 ployer plan, in an amount determined under sub-
8 section (o), and in the case of any other plan” after
9 “section 501(a),”, and

10 (2) by inserting at the end the following new
11 subsection:

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

14 “(1) IN GENERAL.—In the case of a defined
15 benefit plan to which subsection (a)(1)(A) applies
16 (other than a multiemployer plan), the amount de-
17 termined under this subsection for any taxable year
18 shall be equal to the amount determined under para-
19 graph (2) with respect to each plan year ending with
20 or within the taxable year.

21 “(2) DETERMINATION OF AMOUNT.—The
22 amount determined under this paragraph for any
23 plan year shall be equal to the excess (if any) of—

24 “(A) the greater of—

25 “(i) the sum of—



1 “(I) 150 percent of the funding
2 target applicable to the plan for such
3 plan year, determined under section
4 430, plus

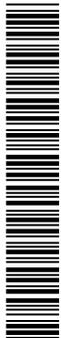
5 “(II) the target normal cost ap-
6 plicable to the plan for such plan
7 year, determined under section
8 430(b), or

9 “(ii) in the case of a plan that is not
10 in an at-risk status (as determined under
11 430(i)), the sum of—

12 “(I) the funding target which
13 would be applicable to the plan for
14 such plan year if such plan were in an
15 at-risk status, determined under sec-
16 tion 430(d) (with regard to section
17 430(i)), plus

18 “(II) the target normal cost
19 which would be applicable to the plan
20 for such plan year if such plan were
21 in an at-risk status, determined under
22 section 430(d) (with regard to section
23 430(i)), over

24 “(B) the value of the plan assets (deter-
25 mined under section 430(g)).



1 “(3) SPECIAL RULE FOR TERMINATING
2 PLANS.—In the case of a plan which, subject to sec-
3 tion 4041 of the Employee Retirement Income Secu-
4 rity Act of 1974, terminates during the plan year,
5 the amount determined under paragraph (2) shall
6 not be less than the amount required to make the
7 plan sufficient for benefit liabilities (within the
8 meaning of section 4041(d) of such Act).

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

12 (b) INCREASE IN DEDUCTION LIMIT FOR MULTIEM-
13 PLOYER PLANS.—Section 404(a)(1)(D) of such Code is
14 amended to read as follows:

15 “(D) AMOUNT DETERMINED ON BASIS OF
16 UNFUNDED CURRENT LIABILITY.—

17 “(i) IN GENERAL.—In the case of a
18 defined benefit plan which is a multiem-
19 ployer plan, except as provided in regula-
20 tions, the maximum amount deductible
21 under the limitations of this paragraph
22 shall not be less than the unfunded current
23 liability of the plan.

24 “(ii) UNFUNDED CURRENT LIABIL-
25 ITY.—For purposes of clause (i), the term



1 ‘unfunded current liability’ means the ex-
2 cess (if any) of—

3 “(I) 140 percent of the current
4 liability of the plan determined under
5 section 431(c)(6)(D), over

6 “(II) the value of the plan’s as-
7 sets determined under section
8 431(c)(2).”.

9 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

17 (B) by striking “section 412(c)(7)” each
18 place it appears and inserting “section
19 431(c)(6)”,

20 (C) by striking “section 412(c)(7)(B)” and
21 inserting “section 431(c)(6)(D)”,

22 (D) by striking “section 412(c)(7)(A)” and
23 inserting “section 431(c)(6)(A)”, and

24 (E) by striking “section 412” and insert-
25 ing “section 431”.



1 (3) Section 404(a)(1) of such Code is amended
2 by striking subparagraph (F).

3 (4) Section 404(a)(7) of such Code is
4 amended—

5 (A) in subparagraph (A)(ii), by striking
6 “for the plan year” and all that follows and in-
7 serting “which are multiemployer plans for the
8 plan year which ends with or within such tax-
9 able year (or for any prior plan year) and the
10 maximum amount of employer contributions al-
11 lowable under subsection (o) with respect to any
12 such defined benefit plans which are not multi-
13 employer plans for the plan year.”,

14 (B) by striking “section 412(l)” in the last
15 sentence of subparagraph (A) and inserting
16 “paragraph (1)(D)(ii)”, and

17 (C) by striking subparagraph (D) and in-
18 serting:

19 “(D) INSURANCE CONTRACT PLANS.—For
20 purposes of this paragraph, a plan described in
21 section 412(e)(3) shall be treated as a defined
22 benefit plan.”.

23 (5) Section 404A(g)(3)(A) of such Code is
24 amended by striking “paragraphs (3) and (7) of sec-



1 such plans in such preceding taxable
2 years.”.

3 (b) CONFORMING AMENDMENTS.—Subparagraph (A)
4 of section 4972(c)(6) of such Code (relating to nondeduct-
5 ible contributions) is amended to read as follows:

6 “(A) so much of the contributions to 1 or
7 more defined contribution plans which are not
8 deductible when contributed solely because of
9 section 404(a)(7) as does not exceed the
10 amount of contributions described in section
11 401(m)(4)(A), or”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to contributions for taxable years
14 beginning after December 31, 2006.

15 **TITLE IX—ENHANCED RETIRE-**
16 **MENTS SAVINGS AND DE-**
17 **FINED CONTRIBUTION PLANS**

18 **SEC. 901. PENSIONS AND INDIVIDUAL RETIREMENT AR-**
19 **RANGEMENT PROVISIONS OF ECONOMIC**
20 **GROWTH AND TAX RELIEF RECONCILIATION**
21 **ACT OF 2001 MADE PERMANENT.**

22 Title IX of the Economic Growth and Tax Relief Rec-
23 onciliation Act of 2001 shall not apply to the provisions
24 of, and amendments made by, subtitles (A) through (F)



1 of title VI of such Act (relating to pension and individual
2 retirement arrangement provisions).

3 **SEC. 902. SAVER'S CREDIT MADE PERMANENT.**

4 (a) IN GENERAL.—Section 25B of the Internal Rev-
5 enue Code of 1986 (relating to elective deferrals and IRA
6 contributions by certain individuals) is amended by strik-
7 ing subsection (h).

8 (b) SUNSET NOT APPLICABLE.—Title IX of the Eco-
9 nomic Growth and Tax Relief Reconciliation Act of 2001
10 shall not apply to the amendments made by section 618
11 of such Act (relating to nonrefundable credit to certain
12 individuals for elective deferrals and IRA contributions).

13 **SEC. 903. INCREASING PARTICIPATION THROUGH AUTO-**
14 **MATIC CONTRIBUTION ARRANGEMENTS.**

15 (a) IN GENERAL.—Section 401(k) of the Internal
16 Revenue Code of 1986 (relating to cash or deferred ar-
17 rangement) is amended by adding at the end the following
18 new paragraph:

19 “(13) ALTERNATIVE METHOD FOR AUTOMATIC
20 CONTRIBUTION ARRANGEMENTS TO MEET NON-
21 DISCRIMINATION REQUIREMENTS.—

22 “(A) IN GENERAL.—A qualified automatic
23 contribution arrangement shall be treated as
24 meeting the requirements of paragraph
25 (3)(A)(ii).



1 “(B) QUALIFIED AUTOMATIC CONTRIBU-
2 TION ARRANGEMENT.—For purposes of this
3 paragraph, the term ‘qualified automatic con-
4 tribution arrangement’ means any cash or de-
5 ferred arrangement which meets the require-
6 ments of subparagraphs (C) through (F).

7 “(C) AUTOMATIC DEFERRAL.—

8 “(i) IN GENERAL.—The requirements
9 of this subparagraph are met if, under the
10 arrangement, each employee eligible to
11 participate in the arrangement is treated
12 as having elected to have the employer
13 make elective contributions in an amount
14 equal to a qualified percentage of com-
15 pensation.

16 “(ii) ELECTION OUT.—The election
17 treated as having been made under clause
18 (i) shall cease to apply with respect to any
19 employee if such employee makes an af-
20 firmative election—

21 “(I) to not have such contribu-
22 tions made, or

23 “(II) to make elective contribu-
24 tions at a level specified in such af-
25 firmative election.



1 “(iii) QUALIFIED PERCENTAGE.—For
2 purposes of this subparagraph, the term
3 ‘qualified percentage’ means, with respect
4 to any employee, any percentage deter-
5 mined under the arrangement if such per-
6 centage is applied uniformly, does not ex-
7 ceed 10 percent, and is at least—

8 “(I) 3 percent during the period
9 ending on the last day of the first
10 plan year which begins after the date
11 on which the first elective contribution
12 described in clause (i) is made with
13 respect to such employee,

14 “(II) 4 percent during the first
15 plan year following the plan year de-
16 scribed in subclause (I),

17 “(III) 5 percent during the sec-
18 ond plan year following the plan year
19 described in subclause (I), and

20 “(IV) 6 percent during any sub-
21 sequent plan year.

22 “(iv) AUTOMATIC DEFERRAL FOR
23 CURRENT EMPLOYEES NOT REQUIRED.—
24 Clause (i) shall be applied without taking
25 into account any employee who was eligible



1 to participate in the arrangement (or a
2 predecessor arrangement) immediately be-
3 fore the date on which such arrangement
4 becomes a qualified automatic contribution
5 arrangement (determined after application
6 of this clause).

7 “(D) PARTICIPATION.—

8 “(i) IN GENERAL.—An arrangement
9 meets the requirements of this subpara-
10 graph for any year if, during the plan year
11 or the preceding plan year, elective con-
12 tributions are made on behalf of at least
13 70 percent of the employees eligible to par-
14 ticipate in the arrangement other than—

15 “(I) highly compensated employ-
16 ees, and

17 “(II) at the election of the plan
18 administrator, employees described in
19 subparagraph (C)(iv).

20 “(ii) FIRST PLAN YEAR.—An arrange-
21 ment (other than a successor arrangement)
22 shall be treated as meeting the require-
23 ments of this subparagraph with respect to
24 the first plan year with respect to which
25 such arrangement is a qualified automatic



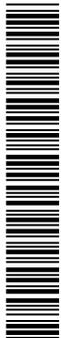
1 contribution arrangement (determined
2 without regard to this subparagraph).

3 “(E) MATCHING OR NONELECTIVE CON-
4 TRIBUTIONS.—

5 “(i) IN GENERAL.—The requirements
6 of this subparagraph are met if, under the
7 arrangement, the employer—

8 “(I) makes matching contribu-
9 tions on behalf of each employee who
10 is not a highly compensated employee
11 in an amount equal to 50 percent of
12 the elective contributions of the em-
13 ployee to the extent such elective con-
14 tributions do not exceed 6 percent of
15 compensation, or

16 “(II) is required, without regard
17 to whether the employee makes an
18 elective contribution or employee con-
19 tribution, to make a contribution to a
20 defined contribution plan on behalf of
21 each employee who is not a highly
22 compensated employee and who is eli-
23 gible to participate in the arrange-
24 ment in an amount equal to at least



1 2 percent of the employee's compensa-
2 tion.

3 “(ii) APPLICATION OF RULES FOR
4 MATCHING CONTRIBUTIONS.—The rules of
5 clauses (ii) and (iii) of paragraph (12)(B)
6 shall apply for purposes of clause (i)(I).

7 “(iii) WITHDRAWAL AND VESTING RE-
8 STRICTIONS.—An arrangement shall not be
9 treated as meeting the requirements of
10 clause (i) unless, with respect to employer
11 contributions (including matching con-
12 tributions) taken into account in deter-
13 mining whether the requirements of clause
14 (i) are met—

15 “(I) any employee who has com-
16 pleted at least 2 years of service
17 (within the meaning of section
18 411(a)) has a nonforfeitable right to
19 100 percent of the employee's accrued
20 benefit derived from such employer
21 contributions, and

22 “(II) the requirements of sub-
23 paragraph (B) of paragraph (2) are
24 met with respect to all such employer
25 contributions.



1 “(iv) APPLICATION OF CERTAIN
2 OTHER RULES.—The rules of subpara-
3 graphs (E)(ii) and (F) of paragraph (12)
4 shall apply for purposes of subclauses (I)
5 and (II) of clause (i).

6 “(F) NOTICE REQUIREMENTS.—

7 “(i) IN GENERAL.—The requirements
8 of this subparagraph are met if, within a
9 reasonable period before each plan year,
10 each employee eligible to participate in the
11 arrangement for such year receives written
12 notice of the employee’s rights and obliga-
13 tions under the arrangement which—

14 “(I) is sufficiently accurate and
15 comprehensive to apprise the employee
16 of such rights and obligations, and

17 “(II) is written in a manner cal-
18 culated to be understood by the aver-
19 age employee to whom the arrange-
20 ment applies.

21 “(ii) TIMING AND CONTENT REQUIRE-
22 MENTS.—A notice shall not be treated as
23 meeting the requirements of clause (i) with
24 respect to an employee unless—



1 “(I) the notice explains the em-
2 ployee’s right under the arrangement
3 to elect not to have elective contribu-
4 tions made on the employee’s behalf
5 (or to elect to have such contributions
6 made at a different percentage),

7 “(II) in the case of an arrange-
8 ment under which the employee may
9 elect among 2 or more investment op-
10 tions, the notice explains how con-
11 tributions made under the arrange-
12 ment will be invested in the absence of
13 any investment election by the em-
14 ployee, and

15 “(III) the employee has a reason-
16 able period of time after receipt of the
17 notice described in subclauses (I) and
18 (II) and before the first elective con-
19 tribution is made to make either such
20 election.”.

21 (b) MATCHING CONTRIBUTIONS.—Section 401(m) of
22 such Code (relating to nondiscrimination test for matching
23 contributions and employee contributions) is amended by
24 redesignating paragraph (12) as paragraph (13) and by



1 inserting after paragraph (11) the following new para-
2 graph:

3 “(12) ALTERNATIVE METHOD FOR AUTOMATIC
4 CONTRIBUTION ARRANGEMENTS.—A defined con-
5 tribution plan shall be treated as meeting the re-
6 quirements of paragraph (2) with respect to match-
7 ing contributions if the plan—

8 “(A) is a qualified automatic contribution
9 arrangement (as defined in subsection (k)(13)),
10 and

11 “(B) meets the requirements of paragraph
12 (11)(B).”.

13 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY
14 PLANS.—

15 (1) ELECTIVE CONTRIBUTION RULE.—Clause
16 (i) of section 416(g)(4)(H) of such Code is amended
17 by inserting “or 401(k)(13)” after “section
18 401(k)(12)”.

19 (2) MATCHING CONTRIBUTION RULE.—Clause
20 (ii) of section 416(g)(4)(H) of such Code is amended
21 by inserting “or 401(m)(12)” after “section
22 401(m)(11)”.

23 (d) CORRECTIVE DISTRIBUTIONS.—

24 (1) IN GENERAL.—Section 414 of the Internal
25 Revenue Code of 1986 (relating to definitions and



1 special rules) is amended by adding at the end the
2 following new subsection:

3 “(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

4 “(1) IN GENERAL.—No tax shall be imposed
5 under section 72(t) on a distribution from an appli-
6 cable employer plan to the employee with respect to
7 whom such contribution relates if such distribution
8 does not exceed the erroneous automatic contribu-
9 tion amount and is made not later than the 1st
10 April 15 following the close of the taxable year in
11 which such contribution was made.

12 “(2) ERRONEOUS AUTOMATIC CONTRIBUTION
13 AMOUNT.—For purposes of this subsection—

14 “(A) IN GENERAL.—The term ‘erroneous
15 automatic contribution amount’ means the less-
16 er of—

17 “(i) the amount of automatic con-
18 tributions made during the applicable pe-
19 riod which the employee elects in a notice
20 to the plan administrator to treat as an er-
21 roneous automatic contribution amount for
22 purposes of this subsection, or

23 “(ii) \$500.



1 “(B) AUTOMATIC CONTRIBUTION.—The
2 term ‘automatic contribution’ means contribu-
3 tions which, under the terms of the plan—

4 “(i) the employee can elect to be made
5 as contributions under the plan on behalf
6 of the employee, or to the employee di-
7 rectly in cash, and

8 “(ii) which are made on behalf of the
9 employee under the plan pursuant to a
10 plan provision treating the employee as
11 having elected to have the employer make
12 such contributions on behalf of the em-
13 ployee until the employee affirmatively
14 elects not to have such contribution made
15 or affirmatively elects to make contribu-
16 tions as a specified level.

17 “(3) APPLICABLE EMPLOYER PLAN.—For pur-
18 poses of this subsection, the term ‘applicable em-
19 ployer plan’ means—

20 “(A) an employees’ trust described in sec-
21 tion 401(a) which is exempt from tax under
22 section 501(a), and

23 “(B) a plan under which amounts are con-
24 tributed by an individual’s employer for an an-
25 nuity contract described in section 403(b).



1 “(4) APPLICABLE PERIOD.—For purposes of
2 this subsection, the term ‘applicable period’ means,
3 with respect to any employee, the three month pe-
4 riod that begins on the first date that an automatic
5 contribution described in paragraph (2)(B) is made
6 with respect to such employee.”.

7 (2) VESTING CONFORMING AMENDMENTS.—

8 (A) Section 411(a)(3)(G) of such Code is
9 amended by inserting “an erroneous automatic
10 contribution under section 414(w),” after
11 “402(g)(2)(A),”.

12 (B) The heading of section 411(a)(3)(G) of
13 such Code is amended by inserting “**OR ERRO-**
14 **NEOUS AUTOMATIC CONTRIBUTION**” before
15 the period.

16 (C) Section 401(k)(8)(E) of such Code is
17 amended by inserting “an erroneous automatic
18 contribution under section 414(w),” after
19 “402(g)(2)(A),”.

20 (D) The heading of section 401(k)(8)(E)
21 of such Code is amended by inserting “**OR ER-**
22 **RONEOUS AUTOMATIC CONTRIBUTION**” be-
23 fore the period.



1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2005.

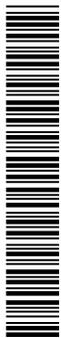
4 **SEC. 904. PENALTY-FREE WITHDRAWALS FROM RETIRE-**
5 **MENT PLANS FOR INDIVIDUALS CALLED TO**
6 **ACTIVE DUTY FOR AT LEAST 179 DAYS.**

7 (a) IN GENERAL.—Paragraph (2) of section 72(t) of
8 the Internal Revenue Code of 1986 (relating to 10-percent
9 additional tax on early distributions from qualified retire-
10 ment plans) is amended by adding at the end the following
11 new subparagraph:

12 “(G) DISTRIBUTIONS FROM RETIREMENT
13 PLANS TO INDIVIDUALS CALLED TO ACTIVE
14 DUTY.—

15 “(i) IN GENERAL.—Any qualified re-
16 servist distribution.

17 “(ii) AMOUNT DISTRIBUTED MAY BE
18 REPAID.—Any individual who receives a
19 qualified reservist distribution may, at any
20 time during the 2-year period beginning on
21 the day after the end of the active duty pe-
22 riod, make one or more contributions to an
23 individual retirement plan of such indi-
24 vidual in an aggregate amount not to ex-
25 ceed the amount of such distribution. The



1 dollar limitations otherwise applicable to
2 contributions to individual retirement plans
3 shall not apply to any contribution made
4 pursuant to the preceding sentence. No de-
5 duction shall be allowed for any contribu-
6 tion pursuant to this clause.

7 “(iii) QUALIFIED RESERVIST DIS-
8 TRIBUTION.—For purposes of this sub-
9 paragraph, the term ‘qualified reservist
10 distribution’ means any distribution to an
11 individual if—

12 “(I) such distribution is from an
13 individual retirement plan, or from
14 amounts attributable to employer con-
15 tributions made pursuant to elective
16 deferrals described in subparagraph
17 (A) or (C) of section 402(g)(3) or sec-
18 tion 501(e)(18)(D)(iii),

19 “(II) such individual was (by rea-
20 son of being a member of a reserve
21 component (as defined in section 101
22 of title 37, United States Code)), or-
23 dered or called to active duty for a pe-
24 riod in excess of 179 days or for an
25 indefinite period, and



1 “(III) such distribution is made
2 during the period beginning on the
3 date of such order or call and ending
4 at the close of the active duty period.

5 “(iv) APPLICATION OF SUBPARA-
6 GRAPH.—This subparagraph applies to in-
7 dividuals ordered or called to active duty
8 after September 11, 2001, and before Sep-
9 tember 12, 2007. In no event shall the 2-
10 year period referred to in clause (ii) end
11 before the date which is 2-years after the
12 date of the enactment of this subpara-
13 graph.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 401(k)(2)(B)(i) of such Code is
16 amended by striking “or” at the end of subclause
17 (III), by striking “and” at the end of subclause (IV)
18 and inserting “or”, and by inserting after subclause
19 (IV) the following new subclause:

20 “(V) in the case of a qualified re-
21 servist distribution (as defined in sec-
22 tion 72(t)(2)(G)(iii)), the date on
23 which a period referred to in sub-
24 clause (III) of such section begins,
25 and”.



1 (2) Section 403(b)(7)(A)(ii) of such Code is
2 amended by inserting “(unless such amount is a dis-
3 tribution to which section 72(t)(2)(G) applies)” after
4 “distributee”.

5 (3) Section 403(b)(11) of such Code is amend-
6 ed by striking “or” at the end of subparagraph (A),
7 by striking the period at the end of subparagraph
8 (B) and inserting “, or”, and by inserting after sub-
9 paragraph (B) the following new subparagraph:

10 “(C) for distributions to which section
11 72(t)(2)(G) applies.”.

12 (c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

13 (1) EFFECTIVE DATE.—The amendment made
14 by this section shall apply to distributions after Sep-
15 tember 11, 2001.

16 (2) WAIVER OF LIMITATIONS.—If refund or
17 credit of any overpayment of tax resulting from the
18 amendments made by this section is prevented at
19 any time before the close of the 1-year period begin-
20 ning on the date of the enactment of this Act by the
21 operation of any law or rule of law (including res ju-
22 dicata), such refund or credit may nevertheless be
23 made or allowed if claim therefor is filed before the
24 close of such period.



1 **SEC. 905. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**
2 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**
3 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**
4 **PLOYEES.**

5 (a) IN GENERAL.—Section 72(t)(2) of the Internal
6 Revenue Code of 1986 (relating to subsection not to apply
7 to certain distributions), as amended by section 904, is
8 amended by adding at the end the following new sub-
9 section:

10 “(H) DROP DISTRIBUTIONS TO QUALI-
11 FIED PUBLIC SAFETY EMPLOYEES IN GOVERN-
12 MENTAL PLANS.—

13 “(i) IN GENERAL.—Distributions to
14 an individual who is a qualified public safe-
15 ty employee from a governmental plan
16 within the meaning of section 414(d) to
17 the extent such distributions are attrib-
18 utable to a DROP benefit.

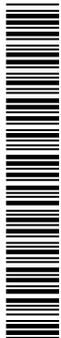
19 “(ii) DEFINITIONS.—For purposes of
20 this subparagraph—

21 “(I) DROP BENEFIT.—The term
22 ‘DROP benefit’ means a feature of a
23 governmental plan which is a defined
24 benefit plan and under which an em-
25 ployee elects to receive credits to an
26 account (including a notional account)



1 in the plan which are not in excess of
2 the plan benefits (payable in the form
3 of an annuity) that would have been
4 provided if the employee had retired
5 under the plan at a specified earlier
6 retirement date and which are in lieu
7 of increases in the employee's accrued
8 pension benefit based on years of
9 service after the effective date of the
10 DROP election.

11 “(II) QUALIFIED PUBLIC SAFETY
12 EMPLOYEE.—The term ‘qualified pub-
13 lic safety employee’ means any em-
14 ployee of any police department or fire
15 department organized and operated by
16 a State or political subdivision of a
17 State if the employee provides police
18 protection, firefighting services, or
19 emergency medical services for any
20 area within the jurisdiction of such
21 State or political subdivision and if
22 the employee was eligible to retire on
23 or before the date of such election and
24 receive immediate retirement bene-
25 fits.”.



1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to distributions after the date of
3 the enactment of this Act.

4 **SEC. 906. COMBAT ZONE COMPENSATION TAKEN INTO AC-**
5 **COUNT FOR PURPOSES OF DETERMINING**
6 **LIMITATION AND DEDUCTIBILITY OF CON-**
7 **TRIBUTIONS TO INDIVIDUAL RETIREMENT**
8 **PLANS.**

9 (a) IN GENERAL.—Subsection (f) of section 219 of
10 the Internal Revenue Code of 1986 is amended by redesi-
11 gnating paragraph (7) as paragraph (8) and by inserting
12 after paragraph (6) the following new paragraph:

13 “(7) SPECIAL RULE FOR COMPENSATION
14 EARNED BY MEMBERS OF THE ARMED FORCES FOR
15 SERVICE IN A COMBAT ZONE.—For purposes of sub-
16 sections (b)(1)(B) and (c), the amount of compensa-
17 tion includible in an individual’s gross income shall
18 be determined without regard to section 112.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2005.

22 **SEC. 907. DIRECT PAYMENT OF TAX REFUNDS TO INDI-**
23 **VIDUAL RETIREMENT PLANS.**

24 (a) IN GENERAL.—The Secretary of the Treasury (or
25 the Secretary’s delegate) shall make available a form (or



1 modify existing forms) for use by individuals to direct that
2 a portion of any refund of overpayment of tax imposed
3 by chapter 1 of the Internal Revenue Code of 1986 be
4 paid directly to an individual retirement plan (as defined
5 in section 7701(a)(37) of such Code) of such individual.

6 (b) EFFECTIVE DATE.—The form required by sub-
7 section (a) shall be made available for taxable years begin-
8 ning after December 31, 2006.

9 **TITLE X—PROVISIONS TO EN-**
10 **HANCE HEALTH CARE AF-**
11 **FORDABILITY**

12 **SEC. 1001. TREATMENT OF ANNUITY AND LIFE INSURANCE**
13 **CONTRACTS WITH A LONG-TERM CARE IN-**
14 **SURANCE FEATURE.**

15 (a) EXCLUSION FROM GROSS INCOME.—Subsection
16 (e) of section 72 of the Internal Revenue Code of 1986
17 (relating to amounts not received as annuities) is amended
18 by redesignating paragraph (11) as paragraph (12) and
19 by inserting after paragraph (10) the following new para-
20 graph:

21 “(11) SPECIAL RULES FOR CERTAIN COMBINA-
22 TION CONTRACTS PROVIDING LONG-TERM CARE IN-
23 SURANCE.—Notwithstanding paragraphs (2), (5)(C),
24 and (10), in the case of any charge against the cash
25 value of an annuity contract or the cash surrender



1 value of a life insurance contract made as payment
2 for coverage under a qualified long-term care insur-
3 ance contract which is part of or a rider on such an-
4 nuity or life insurance contract—

5 “(A) the investment in the contract shall
6 be reduced (but not below zero) by such charge,
7 and

8 “(B) such charge shall not be includible in
9 gross income.”.

10 (b) TAX-FREE EXCHANGES AMONG CERTAIN INSUR-
11 ANCE POLICIES.—

12 (1) ANNUITY CONTRACTS CAN INCLUDE QUALI-
13 FIED LONG-TERM CARE INSURANCE RIDERS.—Para-
14 graph (2) of section 1035(b) of such Code is amend-
15 ed by adding at the end the following new sentence:
16 “For purposes of the preceding sentence, a contract
17 shall not fail to be treated as an annuity contract
18 solely because a qualified long-term care insurance
19 contract is a part of or a rider on such contract.”.

20 (2) LIFE INSURANCE CONTRACTS CAN INCLUDE
21 QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—
22 Paragraph (3) of section 1035(b) of such Code is
23 amended by adding at the end the following new
24 sentence: “For purposes of the preceding sentence,
25 a contract shall not fail to be treated as a life insur-



1 ance contract solely because a qualified long-term
2 care insurance contract is a part of or a rider on
3 such contract.”.

4 (3) EXPANSION OF TAX-FREE EXCHANGES OF
5 LIFE INSURANCE, ENDOWMENT, AND ANNUITY CON-
6 TRACTS FOR LONG-TERM CARE CONTRACTS.—Sub-
7 section (a) of section 1035 of such Code (relating to
8 certain exchanges of insurance policies) is
9 amended—

10 (A) in paragraph (1) by striking “con-
11 tract;” and inserting “contract or for a quali-
12 fied long-term care insurance contract;”,

13 (B) in paragraph (2) by striking “con-
14 tract;” and inserting “contract, or (C) for a
15 qualified long-term care insurance contract;”,
16 and

17 (C) in paragraph (3) by striking “con-
18 tract.” and inserting “contract or for a quali-
19 fied long-term care insurance contract.”.

20 (4) TAX-FREE EXCHANGES OF QUALIFIED
21 LONG-TERM CARE INSURANCE CONTRACT.—Sub-
22 section (a) of section 1035 of such Code (relating to
23 certain exchanges of insurance policies) is amended
24 by striking “or” at the end of paragraph (2), by
25 striking the period at the end of paragraph (3) and



1 inserting “; or”, and by inserting after paragraph
2 (3) the following new paragraph:

3 “(4) a qualified long-term care insurance con-
4 tract for a qualified long-term care insurance con-
5 tract.”.

6 (c) TREATMENT OF COVERAGE PROVIDED AS PART
7 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Sub-
8 section (e) of section 7702B of such Code (relating to
9 treatment of qualified long-term care insurance) is amend-
10 ed to read as follows:

11 “(e) TREATMENT OF COVERAGE PROVIDED AS PART
12 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

13 “(1) COVERAGE TREATED AS CONTRACT.—Ex-
14 cept as otherwise provided in regulations prescribed
15 by the Secretary, in the case of any long-term care
16 insurance coverage (whether or not qualified) pro-
17 vided by a rider on or as part of a life insurance
18 contract or an annuity contract, this title shall apply
19 as if the portion of the contract providing such cov-
20 erage is a separate contract.

21 “(2) DENIAL OF DEDUCTION UNDER SECTION
22 213.—No deduction shall be allowed under section
23 213(a) for any payment made for coverage under a
24 qualified long-term care insurance contract if such
25 payment is made as a charge against the cash value



1 of an annuity contract or the cash surrender value
2 of a life insurance contract.

3 “(3) APPLICATION OF SECTION 7702.—Section
4 7702(e)(2) (relating to the guideline premium limi-
5 tation) shall be applied by increasing the guideline
6 premium limitation with respect to the life insurance
7 contract, as of any date—

8 “(A) by the sum of any charges (but not
9 premium payments) against the life insurance
10 contract’s cash surrender value (within the
11 meaning of section 7702(f)(2)(A)) for coverage
12 under the qualified long-term care insurance
13 contract made to that date under the life insur-
14 ance contract, less

15 “(B) any such charges the imposition of
16 which reduces the premiums paid for the life in-
17 surance contract (within the meaning of section
18 7702(f)(1)).

19 “(4) PORTION DEFINED.—For purposes of this
20 subsection, the term ‘portion’ means only the terms
21 and benefits under a life insurance contract or annu-
22 ity contract that are in addition to the terms and
23 benefits under the contract without regard to long-
24 term care insurance coverage.



1 “(5) ANNUITY CONTRACTS TO WHICH PARA-
2 GRAPH (1) DOES NOT APPLY.—For purposes of this
3 subsection, none of the following shall be treated as
4 an annuity contract:

5 “(A) A trust described in section 401(a)
6 which is exempt from tax under section 501(a).

7 “(B) A contract—

8 “(i) purchased by a trust described in
9 subparagraph (A),

10 “(ii) purchased as part of a plan de-
11 scribed in section 403(a),

12 “(iii) described in section 403(b),

13 “(iv) provided for employees of a life
14 insurance company under a plan described
15 in section 818(a)(3), or

16 “(v) from an individual retirement ac-
17 count or an individual retirement annuity.

18 “(C) A contract purchased by an employer
19 for the benefit of the employee (or the employ-
20 ee’s spouse).

21 Any dividend described in section 404(k) which is
22 received by a participant or beneficiary shall, for
23 purposes of this paragraph, be treated as paid under
24 a separate contract to which subparagraph (B)(i)
25 applies.”.



1 (d) INFORMATION REPORTING.—

2 (1) Subpart B of part III of subchapter A of
3 chapter 61 of such Code (relating to information
4 concerning transactions with other persons) is
5 amended by adding at the end the following new sec-
6 tion:

7 **“SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED**
8 **LONG-TERM CARE INSURANCE CONTRACTS**
9 **UNDER COMBINED ARRANGEMENTS.**

10 “(a) REQUIREMENT OF REPORTING.—Any person
11 who makes a charge against the cash value of an annuity
12 contract, or the cash surrender value of a life insurance
13 contract, which is excludible from gross income under sec-
14 tion 72(e)(11) shall make a return, according to the forms
15 or regulations prescribed by the Secretary, setting forth—

16 “(1) the amount of the aggregate of such
17 charges against each such contract for the calendar
18 year,

19 “(2) the amount of the reduction in the invest-
20 ment in each such contract by reason of such
21 charges, and

22 “(3) the name, address, and TIN of the indi-
23 vidual who is the holder of each such contract.

24 “(b) STATEMENTS TO BE FURNISHED TO PERSONS
25 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—



1 Every person required to make a return under subsection
2 (a) shall furnish to each individual whose name is required
3 to be set forth in such return a written statement
4 showing—

5 “(1) the name, address, and phone number of
6 the information contact of the person making the
7 payments, and

8 “(2) the information required to be shown on
9 the return with respect to such individual.

10 The written statement required under the preceding sen-
11 tence shall be furnished to the individual on or before Jan-
12 uary 31 of the year following the calendar year for which
13 the return under subsection (a) was required to be made.”.

14 (2) CLERICAL AMENDMENT.—The table of sec-
15 tions for subpart B of part III of subchapter A of
16 such chapter 61 of such Code is amended by adding
17 at the end the following new item:

“Sec. 6050U. Charges or payments for qualified long-term care insurance con-
tracts under combined arrangements.”.

18 (e) TREATMENT OF POLICY ACQUISITION EX-
19 PENSES.—Subsection (e) of section 848 of such Code (re-
20 lating to classification of contracts) is amended by adding
21 at the end the following new paragraph:

22 “(6) TREATMENT OF CERTAIN QUALIFIED
23 LONG-TERM CARE INSURANCE CONTRACT ARRANGE-
24 MENTS.—An annuity or life insurance contract



1 which includes a qualified long-term care insurance
2 contract as a part of or a rider on such annuity or
3 life insurance contract shall be treated as a specified
4 insurance contract not described in subparagraph
5 (A) or (B) of subsection (c)(1).”.

6 (f) TREATMENT AS QUALIFIED ADDITIONAL BEN-
7 EFIT.—Subparagraph (A) of section 7702(f)(5) of such
8 Code (relating to qualified additional benefits) is amended
9 by striking “or” at the end of clause (iv), by redesignating
10 clause (v) as clause (vi), and by inserting after clause (iv)
11 the following new clause:

12 “(v) qualified long-term care insur-
13 ance contract which is a part of or a rider
14 on the contract, or”.

15 (g) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided by para-
17 graph (2), the amendments made by this section
18 shall apply to contracts issued before, on, or after
19 December 31, 2006, but only with respect to periods
20 beginning after such date.

21 (2) SUBSECTION (b).—The amendments made
22 by subsection (b) shall apply with respect to ex-
23 changes occurring after December 31, 2006.



1 **SEC. 1002. DISPOSITION OF UNUSED HEALTH BENEFITS IN**
2 **CAFETERIA PLANS AND FLEXIBLE SPENDING**
3 **ARRANGEMENTS.**

4 (a) IN GENERAL.—Section 125 of the Internal Rev-
5 enue Code of 1986 (relating to cafeteria plans) is amended
6 by redesignating subsections (h) and (i) as subsections (i)
7 and (j), respectively, and by inserting after subsection (g)
8 the following:

9 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH
10 BENEFITS.—

11 “(1) IN GENERAL.—For purposes of this title,
12 a plan or other arrangement shall not fail to be
13 treated as a cafeteria plan solely because qualified
14 benefits under such plan include a health flexible
15 spending arrangement under which not more than
16 \$500 of unused health benefits may be—

17 “(A) carried forward to the succeeding
18 plan year of such health flexible spending ar-
19 rangement, or

20 “(B) to the extent permitted by section
21 106(d), contributed by the employer to a health
22 savings account (as defined in section 223(d))
23 maintained for the benefit of the employee.

24 “(2) HEALTH FLEXIBLE SPENDING ARRANGE-
25 MENT.—For purposes of this subsection, the term
26 ‘health flexible spending arrangement’ means a flexi-



1 ble spending arrangement (as defined in section
2 106(c)) that is a qualified benefit and only permits
3 reimbursement for expenses for medical care (as de-
4 fined in section 213(d)(1), without regard to sub-
5 paragraphs (C) and (D) thereof).

6 “(3) UNUSED HEALTH BENEFITS.—For pur-
7 poses of this subsection, with respect to an em-
8 ployee, the term ‘unused health benefits’ means the
9 excess of—

10 “(A) the maximum amount of reimburse-
11 ment allowable to the employee for a plan year
12 under a health flexible spending arrangement,
13 over

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

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall apply to taxable years beginning after
18 December 31, 2005.

19 **SEC. 1003. DISTRIBUTIONS FROM GOVERNMENTAL RETIRE-**
20 **MENT PLANS FOR HEALTH AND LONG-TERM**
21 **CARE INSURANCE FOR PUBLIC SAFETY OFFI-**
22 **CERS.**

23 (a) IN GENERAL.—Section 402 of the Internal Rev-
24 enue Code of 1986 (relating to taxability of beneficiary



1 of employees' trust) is amended by adding at the end the
2 following new subsection:

3 “(1) DISTRIBUTIONS FROM GOVERNMENTAL PLANS
4 FOR HEALTH AND LONG-TERM CARE INSURANCE.—

5 “(1) IN GENERAL.—In the case of an employee
6 who is an eligible retired public safety officer who
7 makes the election described in paragraph (6) with
8 respect to any taxable year of such employee, gross
9 income of such employee for such taxable year does
10 not include any distribution from an eligible retire-
11 ment plan to the extent that the aggregate amount
12 of such distributions does not exceed the amount
13 paid by such employee for qualified health insurance
14 premiums of the employee, his spouse, or dependents
15 (as defined in section 152) for such taxable year.

16 “(2) LIMITATION.—The amount which may be
17 excluded from gross income for the taxable year by
18 reason of paragraph (1) shall not exceed \$5,000.

19 “(3) DISTRIBUTIONS MUST OTHERWISE BE IN-
20 CLUDIBLE.—

21 “(A) IN GENERAL.—An amount shall be
22 treated as a distribution for purposes of para-
23 graph (1) only to the extent that such amount
24 would be includible in gross income without re-
25 gard to paragraph (1).



1 “(B) APPLICATION OF SECTION 72.—Not-
2 withstanding section 72, in determining the ex-
3 tent to which an amount is treated as a dis-
4 tribution for purposes of subparagraph (A), the
5 aggregate amounts distributed from an eligible
6 retirement plan in a taxable year (up to the
7 amount excluded under paragraph (1)) shall be
8 treated as includible in gross income (without
9 regard to subparagraph (A)) to the extent that
10 such amount does not exceed the aggregate
11 amount which would have been so includible if
12 all amounts distributed from all eligible retire-
13 ment plans were treated as 1 contract for pur-
14 poses of determining the inclusion of such dis-
15 tribution under section 72. Proper adjustments
16 shall be made in applying section 72 to other
17 distributions in such taxable year and subse-
18 quent taxable years.

19 “(4) DEFINITIONS.—For purposes of this
20 subsection—

21 “(A) ELIGIBLE RETIREMENT PLAN.—For
22 purposes of paragraph (1), the term ‘eligible re-
23 tirement plan’ means a governmental plan
24 (within the meaning of section 414(d)) which is



1 described in clause (iii), (iv), (v), or (vi) of sub-
2 section (c)(8)(B).

3 “(B) ELIGIBLE RETIRED PUBLIC SAFETY
4 OFFICER.—The term ‘eligible retired public
5 safety officer’ means an individual who, by rea-
6 son of disability or attainment of normal retire-
7 ment age, is separated from service as a public
8 safety officer with the employer who maintains
9 the eligible retirement plan from which distribu-
10 tions subject to paragraph (1) are made.

11 “(C) PUBLIC SAFETY OFFICER.—The term
12 ‘public safety officer’ shall have the same mean-
13 ing given such term by section 1204(8)(A) of
14 the Omnibus Crime Control and Safe Streets
15 Act of 1968 (42 U.S.C. 3796b(8)(A)).

16 “(D) QUALIFIED HEALTH INSURANCE
17 PREMIUMS.—The term ‘qualified health insur-
18 ance premiums’ means premiums for coverage
19 for the eligible retired public safety officer, his
20 spouse, and dependents, by an accident or
21 health insurance plan or qualified long-term
22 care insurance contract (as defined in section
23 7702B(b)).

24 “(5) SPECIAL RULES.—For purposes of this
25 subsection—



1 “(A) DIRECT PAYMENT TO INSURER RE-
2 QUIRED.—Paragraph (1) shall only apply to a
3 distribution if payment of the premiums is
4 made directly to the provider of the accident or
5 health insurance plan or qualified long-term
6 care insurance contract by deduction from a
7 distribution from the eligible retirement plan.

8 “(B) RELATED PLANS TREATED AS 1.—All
9 eligible retirement plans of an employer shall be
10 treated as a single plan.

11 “(6) ELECTION DESCRIBED.—

12 “(A) IN GENERAL.—For purposes of para-
13 graph (1), an election is described in this para-
14 graph if the election is made by an employee
15 after separation from service with respect to
16 amounts not distributed from an eligible retire-
17 ment plan to have amounts from such plan dis-
18 tributed in order to pay for qualified health in-
19 surance premiums.

20 “(B) SPECIAL RULE.—A plan shall not be
21 treated as violating the requirements of section
22 401, or as engaging in a prohibited transaction
23 for purposes of section 503(b), merely because
24 it provides for an election with respect to
25 amounts that are otherwise distributable under



1 the plan or merely because of a distribution
2 made pursuant to an election described in sub-
3 paragraph (A).

4 “(7) COORDINATION WITH MEDICAL EXPENSE
5 DEDUCTION.—The amounts excluded from gross in-
6 come under paragraph (1) shall not be taken into
7 account under section 213.

8 “(8) COORDINATION WITH DEDUCTION FOR
9 HEALTH INSURANCE COSTS OF SELF-EMPLOYED IN-
10 DIVIDUALS.—The amounts excluded from gross in-
11 come under paragraph (1) shall not be taken into
12 account under section 162(l).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 403(a) of such Code (relating to
15 taxability of beneficiary under a qualified annuity
16 plan) is amended by inserting after paragraph (1)
17 the following new paragraph:

18 “(2) SPECIAL RULE FOR HEALTH AND LONG-
19 TERM CARE INSURANCE.—To the extent provided in
20 section 402(l), paragraph (1) shall not apply to the
21 amount distributed under the contract which is oth-
22 erwise includible in gross income under this sub-
23 section.”.

24 (2) Section 403(b) of such Code (relating to
25 taxability of beneficiary under annuity purchased by



1 section 501(c)(3) organization or public school) is
2 amended by inserting after paragraph (1) the fol-
3 lowing new paragraph:

4 “(2) SPECIAL RULE FOR HEALTH AND LONG-
5 TERM CARE INSURANCE.—To the extent provided in
6 section 402(l), paragraph (1) shall not apply to the
7 amount distributed under the contract which is oth-
8 erwise includible in gross income under this sub-
9 section.”.

10 (3) Section 457(a) of such Code (relating to
11 year of inclusion in gross income) is amended by
12 adding at the end the following new paragraph:

13 “(3) SPECIAL RULE FOR HEALTH AND LONG-
14 TERM CARE INSURANCE.—In the case of a plan of
15 an eligible employer described in subsection
16 (e)(1)(A), to the extent provided in section 402(l),
17 paragraph (1) shall not apply to amounts otherwise
18 includible in gross income under this subsection.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to distributions in taxable years
21 beginning after December 31, 2005.

