

**Calendar No. 276**109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**S. 1953****[Report No. 109-174]**

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension benefits are funded and that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

NOVEMBER 2, 2005

Mr. GRASSLEY, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

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**A BILL**

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension benefits are funded and that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “National Employee Savings and Trust Equity Guarantee  
 4 Act of 2005”.

5 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

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

- Sec. 101. Defined contribution plans required to provide employees with freedom to invest their plan assets.  
 Sec. 102. Notice of freedom to divest employer securities or real property.  
 Sec. 103. Periodic pension benefit statements.  
 Sec. 104. Notice to participants or beneficiaries of blackout periods.  
 Sec. 105. Allowance of, and credit for, additional IRA payments in certain bankruptcy cases.

**TITLE II—INFORMATION TO ASSIST PENSION PLAN  
 PARTICIPANTS**

- Sec. 201. Defined contribution plans required to provide adequate investment education to participants.  
 Sec. 202. Material information relating to investment in employer securities.  
 Sec. 203. Independent investment advice provided to plan participants.  
 Sec. 204. Treatment of qualified retirement planning services.  
 Sec. 205. Administrative provisions.

**TITLE III—IMPROVEMENTS IN FUNDING RULES FOR SINGLE-  
 EMPLOYER PENSION PLANS**

Subtitle A—Rules Relating to Funding, Benefit Limitations, and Deductions

**PART I—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986**

- Sec. 301. Modifications of the minimum funding standards.  
 Sec. 302. Funding rules applicable to single-employer pension plans.  
 Sec. 303. Limitation on benefit improvements by single-employer plans which are underfunded or maintained by financially weak or bankrupt employers.  
 Sec. 304. Increase in deduction limit for single-employer plans.  
 Sec. 305. Technical and conforming amendments.

**PART II—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY  
 ACT OF 1974**

- Sec. 311. Modifications of the minimum funding standards.  
 Sec. 312. Funding rules applicable to single-employer pension plans.  
 Sec. 313. Limitation on benefit improvements by single-employer plans which are underfunded or maintained by financially weak or bankrupt employers.  
 Sec. 314. Technical and conforming amendments.

PART III—INTEREST RATE ASSUMPTIONS AND DEDUCTIBLE AMOUNTS FOR  
2006

- Sec. 321. Extension of replacement of 30-year Treasury rates.
- Sec. 322. Deduction limits for plan contributions.
- Sec. 323. Updating deduction rules for combination of plans.

Subtitle B—Related Provisions

- Sec. 331. Replacement of 30-year Treasury rate for calculating lump-sum distributions.
- Sec. 332. Interest rate assumption for applying benefit limitations to lump sum distributions.
- Sec. 333. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.
- Sec. 334. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
- Sec. 335. Modification of pension funding requirements for plans subject to current transition rule.

Subtitle C—Other Provisions

- Sec. 341. Treatment of cash balance and other hybrid defined benefit pension plans.
- Sec. 342. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.

Subtitle D—Studies

- Sec. 351. Joint study on revitalizing defined benefit plans.
- Sec. 352. Study on floor-offset ESOPS.

TITLE IV—DISCLOSURE AND BENEFIT STATEMENT REQUIREMENTS FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS

- Sec. 401. Actuarial reports and summary annual reports.
- Sec. 402. Notice of funding benefit limitations and restrictions on benefit increases.
- Sec. 403. Notice of bankruptcy filing.

TITLE V—IMPROVEMENTS IN FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFITS PENSION PLANS AND RELATED PROVISIONS

- Sec. 501. Deduction limits for multiemployer plans.
- Sec. 502. Multiemployer defined benefit plan funding notices.
- Sec. 503. Transfer of excess pension assets to multiemployer health plan.
- Sec. 504. Administrative provisions.

TITLE VI—PBGC PREMIUM AND GUARANTEE PROVISIONS

- Sec. 601. Increases in PBGC premiums for single-employer plans.
- Sec. 602. Rules relating to bankruptcy of employer.
- Sec. 603. Limitation on PBGC guarantee of shutdown and other benefits.
- Sec. 604. PBGC premiums for new plans of small employers.
- Sec. 605. PBGC premiums for small and new plans.

- Sec. 606. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 607. Rules for substantial owner benefits in terminated plans.
- Sec. 608. Acceleration of PBGC computation of benefits attributable to recoveries from employers.

#### TITLE VII—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

- Sec. 701. Joint study of application of spousal consent rules to defined contribution plans.
- Sec. 702. Regulations on time and order of issuance of domestic relations orders.
- Sec. 703. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
- Sec. 704. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.
- Sec. 705. Requirement for additional survivor annuity option.

#### TITLE VIII—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

- Sec. 801. Clarifications regarding purchase of permissive service credit.
- Sec. 802. Allow rollover of after-tax amounts in annuity contracts.
- Sec. 803. Clarification of minimum distribution rules for governmental plans.
- Sec. 804. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 805. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
- Sec. 806. Faster vesting of employer nonelective contributions.
- Sec. 807. Allow direct rollovers from retirement plans to Roth IRAs.
- Sec. 808. Elimination of higher penalty on certain simple plan distributions.
- Sec. 809. Simple plan portability.
- Sec. 810. Eligibility for participation in retirement plans.
- Sec. 811. Transfers to the PBGC.
- Sec. 812. Missing participants.

#### TITLE IX—ADMINISTRATIVE PROVISIONS

- Sec. 901. Employee Plans Compliance Resolution System.
- Sec. 902. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 903. Notice and consent period regarding distributions.
- Sec. 904. Reporting simplification.
- Sec. 905. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 906. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 907. Withholding on distributions from governmental section 457 plans.
- Sec. 908. Clarification of treatment of defined benefit plans of Indian tribal governments.
- Sec. 909. Treatment of defined benefit plan as governmental plan.
- Sec. 910. Provisions relating to plan amendments.

#### TITLE X—UNITED STATES TAX COURT MODERNIZATION

Sec. 1000. Amendment of 1986 Code.

#### Subtitle A—Tax Court Pension and Compensation

- Sec. 1001. Annuities for survivors of Tax Court judges who are assassinated.
- Sec. 1002. Cost-of-Living adjustments for Tax Court judicial survivor annuities.
- Sec. 1003. Life insurance coverage for Tax Court judges.
- Sec. 1004. Cost of life insurance coverage for Tax Court judges age 65 or over.
- Sec. 1005. Modification of timing of Lump-Sum Payment of judges' accrued annual leave.
- Sec. 1006. Participation of Tax Court judges in the Thrift Savings Plan.
- Sec. 1007. Exemption of teaching compensation of retired judges from limitation on outside earned income.
- Sec. 1008. General provisions relating to Magistrate Judges of the Tax Court.
- Sec. 1009. Annuities to surviving spouses and dependent children of Magistrate Judges of the Tax Court.
- Sec. 1010. Retirement and Annuity Program.
- Sec. 1011. Incumbent Magistrate Judges of the Tax Court.
- Sec. 1012. Provisions for recall.
- Sec. 1013. Effective date.

#### Subtitle B—Tax Court Procedure

- Sec. 1021. Jurisdiction of Tax Court over collection due process cases.
- Sec. 1022. Authority for Magistrate Judges to hear and decide certain employment status cases.
- Sec. 1023. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment.
- Sec. 1024. Tax Court filing fee in all cases commenced by filing petition.
- Sec. 1025. Amendments to appoint employees.
- Sec. 1026. Expanded use of Tax Court practice fee for pro se taxpayers.

#### TITLE XI—OTHER PROVISIONS

- Sec. 1101. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.
- Sec. 1102. Treatment of death benefits from corporate-owned life insurance.

1 **TITLE I—DIVERSIFICATION**  
 2 **RIGHTS AND OTHER PARTICI-**  
 3 **PANT PROTECTIONS UNDER**  
 4 **DEFINED CONTRIBUTION**  
 5 **PLANS**

6 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 7 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**  
 8 **VEST THEIR PLAN ASSETS.**

9 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

10 (1) QUALIFICATION REQUIREMENT.—Section  
 11 401(a) of the Internal Revenue Code of 1986 (relat-  
 12 ing to qualified pension, profit-sharing, and stock  
 13 bonus plans) is amended by inserting after para-  
 14 graph (34) the following new paragraph:

15 “(35) DIVERSIFICATION REQUIREMENTS FOR  
 16 CERTAIN DEFINED CONTRIBUTION PLANS.—

17 “(A) IN GENERAL.—A trust which is part  
 18 of an applicable defined contribution plan shall  
 19 not be treated as a qualified trust unless the  
 20 plan meets the diversification requirements of  
 21 subparagraphs (B), (C), and (D).

22 “(B) EMPLOYEE CONTRIBUTIONS AND  
 23 ELECTIVE DEFERRALS INVESTED IN EMPLOYER  
 24 SECURITIES OR REAL PROPERTY.—In the case  
 25 of the portion of an applicable individual’s ac-

1 count attributable to employee contributions  
2 and elective deferrals which is invested in em-  
3 ployer securities or employer real property, a  
4 plan meets the requirements of this subpara-  
5 graph if the applicable individual may elect to  
6 direct the plan to divest any such securities or  
7 real property and to reinvest an equivalent  
8 amount in other investment options meeting the  
9 requirements of subparagraph (D).

10 “(C) EMPLOYER CONTRIBUTIONS IN-  
11 VESTED IN EMPLOYER SECURITIES OR REAL  
12 PROPERTY.—In the case of the portion of the  
13 account attributable to employer contributions  
14 other than elective deferrals which is invested in  
15 employer securities or employer real property, a  
16 plan meets the requirements of this subpara-  
17 graph if each applicable individual who—

18 “(i) is a participant who has com-  
19 pleted at least 3 years of service, or

20 “(ii) is a beneficiary of a participant  
21 described in clause (i) or of a deceased  
22 participant,

23 may elect to direct the plan to divest any such  
24 securities or real property and to reinvest an

1 equivalent amount in other investment options  
2 meeting the requirements of subparagraph (D).

3 “(D) INVESTMENT OPTIONS.—

4 “(i) IN GENERAL.—The requirements  
5 of this subparagraph are met if the plan  
6 offers not less than 3 investment options,  
7 other than employer securities or employer  
8 real property, to which an applicable indi-  
9 vidual may direct the proceeds from the di-  
10 vestment of employer securities or em-  
11 ployer real property pursuant to this para-  
12 graph, each of which is diversified and has  
13 materially different risk and return charac-  
14 teristics.

15 “(ii) TREATMENT OF CERTAIN RE-  
16 STRICTIONS AND CONDITIONS.—

17 “(I) TIME FOR MAKING INVEST-  
18 MENT CHOICES.—A plan shall not be  
19 treated as failing to meet the require-  
20 ments of this subparagraph merely be-  
21 cause the plan limits the time for di-  
22 vestment and reinvestment to peri-  
23 odic, reasonable opportunities occur-  
24 ring no less frequently than quarterly.

1                   “(II) CERTAIN RESTRICTIONS  
2                   AND CONDITIONS NOT ALLOWED.—  
3                   Except as provided in regulations, a  
4                   plan shall not meet the requirements  
5                   of this subparagraph if the plan im-  
6                   poses restrictions or conditions with  
7                   respect to the investment of employer  
8                   securities or employer real property  
9                   which are not imposed on the invest-  
10                  ment of other assets of the plan. This  
11                  subclause shall not apply to any re-  
12                  strictions or conditions imposed by  
13                  reason of the application of securities  
14                  laws.

15                  “(E) APPLICABLE DEFINED CONTRIBU-  
16                  TION PLAN.—For purposes of this paragraph—

17                         “(i) IN GENERAL.—The term ‘applica-  
18                         ble defined contribution plan’ means any  
19                         defined contribution plan which holds any  
20                         publicly traded employer securities.

21                         “(ii) EXCEPTION FOR CERTAIN  
22                         ESOPS.—Such term does not include an  
23                         employee stock ownership plan if—

24                                 “(I) there are no contributions to  
25                                 such plan (or earnings thereunder)

1 which are held within such plan and  
2 are subject to subsection (k) or (m),  
3 and

4 “(II) such plan is a separate plan  
5 for purposes of section 414(l) with re-  
6 spect to any other defined benefit plan  
7 or defined contribution plan main-  
8 tained by the same employer or em-  
9 ployers.

10 “(iii) EXCEPTION FOR ONE PARTICI-  
11 PANT PLANS.—Such term does not include  
12 a one-participant retirement plan.

13 “(iv) ONE-PARTICIPANT RETIREMENT  
14 PLAN.—For purposes of clause (iii), the  
15 term ‘one-participant retirement plan’  
16 means a retirement plan that—

17 “(I) on the first day of the plan  
18 year covered only one individual (or  
19 the individual and the individual’s  
20 spouse) and the individual owned 100  
21 percent of the plan sponsor (whether  
22 or not incorporated), or covered only  
23 one or more partners (or partners and  
24 their spouses) in the plan sponsor,

1           “(II) meets the minimum cov-  
2           erage requirements of section 410(b)  
3           without being combined with any  
4           other plan of the business that covers  
5           the employees of the business,

6           “(III) does not provide benefits  
7           to anyone except the individual (and  
8           the individual’s spouse) or the part-  
9           ners (and their spouses),

10          “(IV) does not cover a business  
11          that is a member of an affiliated serv-  
12          ice group, a controlled group of cor-  
13          porations, or a group of businesses  
14          under common control, and

15          “(V) does not cover a business  
16          that uses the services of leased em-  
17          ployees (within the meaning of section  
18          414(n)).

19          For purposes of this clause, the term ‘part-  
20          ner’ includes a 2-percent shareholder (as  
21          defined in section 1372(b)) of an S cor-  
22          poration.

23          “(F) CERTAIN PLANS TREATED AS HOLD-  
24          ING PUBLICLY TRADED EMPLOYER SECURI-  
25          TIES.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in regulations or in clause (ii), a plan  
3           holding employer securities which are not  
4           publicly traded employer securities shall be  
5           treated as holding publicly traded employer  
6           securities if any employer corporation, or  
7           any member of a controlled group of cor-  
8           porations which includes such employer  
9           corporation, has issued a class of stock  
10          which is a publicly traded employer secu-  
11          rity.

12           “(ii) EXCEPTION FOR CERTAIN CON-  
13          TROLLED GROUPS WITH PUBLICLY TRAD-  
14          ED SECURITIES.—Clause (i) shall not  
15          apply to a plan if—

16           “(I) no employer corporation, or  
17          parent corporation of an employer  
18          corporation, has issued any publicly  
19          traded employer security, and

20           “(II) no employer corporation, or  
21          parent corporation of an employer  
22          corporation, has issued any special  
23          class of stock which grants particular  
24          rights to, or bears particular risks for,  
25          the holder or issuer with respect to

1 any corporation described in clause (i)  
2 which has issued any publicly traded  
3 employer security.

4 “(iii) DEFINITIONS.—For purposes of  
5 this subparagraph, the term—

6 “(I) ‘controlled group of corpora-  
7 tions’ has the meaning given such  
8 term by section 1563(a), except that  
9 ‘50 percent’ shall be substituted for  
10 ‘80 percent’ each place it appears,

11 “(II) ‘employer corporation’  
12 means a corporation which is an em-  
13 ployer maintaining the plan, and

14 “(III) ‘parent corporation’ has  
15 the meaning given such term by sec-  
16 tion 424(e).

17 “(G) OTHER DEFINITIONS.—For purposes  
18 of this paragraph—

19 “(i) APPLICABLE INDIVIDUAL.—The  
20 term ‘applicable individual’ means—

21 “(I) any participant in the plan,  
22 and

23 “(II) any beneficiary who has an  
24 account under the plan with respect to

1           which the beneficiary is entitled to ex-  
2           ercise the rights of a participant.

3           “(ii) ELECTIVE DEFERRAL.—The  
4           term ‘elective deferral’ means an employer  
5           contribution described in section  
6           402(g)(3)(A).

7           “(iii) EMPLOYER SECURITY.—The  
8           term ‘employer security’ has the meaning  
9           given such term by section 407(d)(1) of  
10          the Employee Retirement Income Security  
11          Act of 1974.

12          “(iv) EMPLOYER REAL PROPERTY.—  
13          The term ‘employer real property’ has the  
14          meaning given such term by section  
15          407(d)(2) of the Employee Retirement In-  
16          come Security Act of 1974.

17          “(v) EMPLOYEE STOCK OWNERSHIP  
18          PLAN.—The term ‘employee stock owner-  
19          ship plan’ has the meaning given such  
20          term by section 4975(e)(7).

21          “(vi) PUBLICLY TRADED EMPLOYER  
22          SECURITIES.—The term ‘publicly traded  
23          employer securities’ means employer secu-  
24          rities which are readily tradable on an es-  
25          tablished securities market.

1           “(vii) YEAR OF SERVICE.—The term  
2           ‘year of service’ has the meaning given  
3           such term by section 411(a)(5).

4           “(H) TRANSITION RULE FOR SECURITIES  
5           OR REAL PROPERTY ATTRIBUTABLE TO EM-  
6           PLOYER CONTRIBUTIONS.—

7           “(i) RULES PHASED IN OVER 3  
8           YEARS.—

9           “(I) IN GENERAL.—In the case  
10           of the portion of an account to which  
11           subparagraph (C) applies and which  
12           consists of employer securities or em-  
13           ployer real property acquired in a plan  
14           year beginning before January 1,  
15           2006, subparagraph (C) shall only  
16           apply to the applicable percentage of  
17           such securities or real property. This  
18           subparagraph shall be applied sepa-  
19           rately with respect to each class of se-  
20           curities and employer real property.

21           “(II) EXCEPTION FOR CERTAIN  
22           PARTICIPANTS AGED 55 OR OVER.—  
23           Subclause (I) shall not apply to an  
24           applicable individual who is a partici-  
25           pant who has attained age 55 and

1 completed at least 3 years of service  
 2 before the first plan year beginning  
 3 after December 31, 2005.

4 “(ii) APPLICABLE PERCENTAGE.—For  
 5 purposes of clause (i), the applicable per-  
 6 centage shall be determined as follows:

<b>Plan year to which subparagraph (C) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d and following .....	100.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) Section 401(a)(28)(B) of such Code  
 9 (relating to additional requirements relating to  
 10 employee stock ownership plans) is amended by  
 11 adding at the end the following new clause:

12 “(v) EXCEPTION.—This subparagraph  
 13 shall not apply to an applicable defined  
 14 contribution plan (as defined in paragraph  
 15 (35)(E)).”

16 (B) Section 409(h)(7) of such Code is  
 17 amended by inserting “or subparagraph (B) or  
 18 (C) of section 401(a)(35)” before the period at  
 19 the end.

20 (C) Section 4980(c)(3)(A) of such Code is  
 21 amended by striking “if—” and all that follows  
 22 and inserting “if the requirements of subpara-  
 23 graphs (B), (C), and (D) are met.”

1 (b) AMENDMENTS OF ERISA.—

2 (1) IN GENERAL.—Section 204 of the Employee  
3 Retirement Income Security Act of 1974 (29 U.S.C.  
4 1054) is amended by redesignating subsection (j) as  
5 subsection (k) and by inserting after subsection (i)  
6 the following new subsection:

7 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN  
8 INDIVIDUAL ACCOUNT PLANS.—

9 “(1) IN GENERAL.—An applicable individual ac-  
10 count plan shall meet the diversification require-  
11 ments of paragraphs (2), (3), and (4).

12 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-  
13 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-  
14 TIES OR REAL PROPERTY.—In the case of the por-  
15 tion of an applicable individual’s account attrib-  
16 utable to employee contributions and elective defer-  
17 rals which is invested in employer securities or em-  
18 ployer real property, a plan meets the requirements  
19 of this paragraph if the applicable individual may  
20 elect to direct the plan to divest any such securities  
21 or real property and to reinvest an equivalent  
22 amount in other investment options meeting the re-  
23 quirements of paragraph (4).

24 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN  
25 EMPLOYER SECURITIES OR REAL PROPERTY.—In the

1 case of the portion of the account attributable to  
2 employer contributions other than elective deferrals  
3 which is invested in employer securities or employer  
4 real property, a plan meets the requirements of this  
5 paragraph if each applicable individual who—

6 “(A) is a participant who has completed at  
7 least 3 years of service, or

8 “(B) is a beneficiary of a participant de-  
9 scribed in subparagraph (A) or of a deceased  
10 participant,

11 may elect to direct the plan to divest any such secu-  
12 rities or real property and to reinvest an equivalent  
13 amount in other investment options meeting the re-  
14 quirements of paragraph (4).

15 “(4) INVESTMENT OPTIONS.—

16 “(A) IN GENERAL.—The requirements of  
17 this paragraph are met if the plan offers not  
18 less than 3 investment options, other than em-  
19 ployer securities or employer real property, to  
20 which an applicable individual may direct the  
21 proceeds from the divestment of employer secu-  
22 rities or employer real property pursuant to this  
23 subsection, each of which is diversified and has  
24 materially different risk and return characteris-  
25 tics.

1           “(B) TREATMENT OF CERTAIN RESTRIC-  
2           TIONS AND CONDITIONS.—

3           “(i) TIME FOR MAKING INVESTMENT  
4           CHOICES.—A plan shall not be treated as  
5           failing to meet the requirements of this  
6           paragraph merely because the plan limits  
7           the time for divestment and reinvestment  
8           to periodic, reasonable opportunities occur-  
9           ring no less frequently than quarterly.

10          “(ii) CERTAIN RESTRICTIONS AND  
11          CONDITIONS NOT ALLOWED.—Except as  
12          provided in regulations, a plan shall not  
13          meet the requirements of this paragraph if  
14          the plan imposes restrictions or conditions  
15          with respect to the investment of employer  
16          securities or employer real property which  
17          are not imposed on the investment of other  
18          assets of the plan. This subparagraph shall  
19          not apply to any restrictions or conditions  
20          imposed by reason of the application of se-  
21          curities laws.

22          “(5) APPLICABLE INDIVIDUAL ACCOUNT  
23          PLAN.—For purposes of this subsection—

24                 “(A) IN GENERAL.—The term ‘applicable  
25                 individual account plan’ means any individual

1 account plan (as defined in section 3(34)) which  
2 holds any publicly traded employer securities.

3 “(B) EXCEPTION FOR CERTAIN ESOPS.—  
4 Such term does not include an employee stock  
5 ownership plan if—

6 “(i) there are no contributions to such  
7 plan (or earnings thereunder) which are  
8 held within such plan and are subject to  
9 subsection (k) or (m) of section 401 of the  
10 Internal Revenue Code of 1986, and

11 “(ii) such plan is a separate plan (for  
12 purposes of section 414(l) of such Code)  
13 with respect to any other defined benefit  
14 plan or individual account plan maintained  
15 by the same employer or employers.

16 “(C) EXCEPTION FOR ONE PARTICIPANT  
17 PLANS.—Such term shall not include a one-par-  
18 ticipant retirement plan (as defined in section  
19 101(i)(8)(B)).

20 “(D) CERTAIN PLANS TREATED AS HOLD-  
21 ING PUBLICLY TRADED EMPLOYER SECURI-  
22 TIES.—

23 “(i) IN GENERAL.—Except as pro-  
24 vided in regulations or in clause (ii), a plan  
25 holding employer securities which are not

1 publicly traded employer securities shall be  
2 treated as holding publicly traded employer  
3 securities if any employer corporation, or  
4 any member of a controlled group of cor-  
5 porations which includes such employer  
6 corporation, has issued a class of stock  
7 which is a publicly traded employer secu-  
8 rity.

9 “(ii) EXCEPTION FOR CERTAIN CON-  
10 TROLLED GROUPS WITH PUBLICLY TRAD-  
11 ED SECURITIES.—Clause (i) shall not  
12 apply to a plan if—

13 “(I) no employer corporation, or  
14 parent corporation of an employer  
15 corporation, has issued any publicly  
16 traded employer security, and

17 “(II) no employer corporation, or  
18 parent corporation of an employer  
19 corporation, has issued any special  
20 class of stock which grants particular  
21 rights to, or bears particular risks for,  
22 the holder or issuer with respect to  
23 any corporation described in clause (i)  
24 which has issued any publicly traded  
25 employer security.

1                   “(iii) DEFINITIONS.—For purposes of  
2 this subparagraph, the term—

3                   “(I) ‘controlled group of corpora-  
4 tions’ has the meaning given such  
5 term by section 1563(a) of the Inter-  
6 nal Revenue Code of 1986, except  
7 that ‘50 percent’ shall be substituted  
8 for ‘80 percent’ each place it appears,

9                   “(II) ‘employer corporation’  
10 means a corporation which is an em-  
11 ployer maintaining the plan, and

12                   “(III) ‘parent corporation’ has  
13 the meaning given such term by sec-  
14 tion 424(e) of such Code.

15                   “(6) OTHER DEFINITIONS.—For purposes of  
16 this paragraph—

17                   “(A) APPLICABLE INDIVIDUAL.—The term  
18 ‘applicable individual’ means—

19                   “(i) any participant in the plan, and

20                   “(ii) any beneficiary who has an ac-  
21 count under the plan with respect to which  
22 the beneficiary is entitled to exercise the  
23 rights of a participant.

24                   “(B) ELECTIVE DEFERRAL.—The term  
25 ‘elective deferral’ means an employer contribu-

1           tion described in section 402(g)(3)(A) of the In-  
2           ternal Revenue Code of 1986.

3           “(C) EMPLOYER SECURITY.—The term  
4           ‘employer security’ has the meaning given such  
5           term by section 407(d)(1).

6           “(D) EMPLOYER REAL PROPERTY.—The  
7           term ‘employer real property’ has the meaning  
8           given such term by section 407(d)(2).

9           “(E) EMPLOYEE STOCK OWNERSHIP  
10          PLAN.—The term ‘employee stock ownership  
11          plan’ has the meaning given such term by sec-  
12          tion 4975(e)(7) of such Code.

13          “(F) PUBLICLY TRADED EMPLOYER SECUR-  
14          ITIES.—The term ‘publicly traded employer  
15          securities’ means employer securities which are  
16          readily tradable on an established securities  
17          market.

18          “(G) YEAR OF SERVICE.—The term ‘year  
19          of service’ has the meaning given such term by  
20          section 203(b)(2).

21          “(7) TRANSITION RULE FOR SECURITIES OR  
22          REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-  
23          TRIBUTIONS.—

24          “(A) RULES PHASED IN OVER 3 YEARS.—

1                   “(i) IN GENERAL.—In the case of the  
 2                   portion of an account to which paragraph  
 3                   (3) applies and which consists of employer  
 4                   securities or employer real property ac-  
 5                   quired in a plan year beginning before  
 6                   January 1, 2006, paragraph (3) shall only  
 7                   apply to the applicable percentage of such  
 8                   securities or real property. This subpara-  
 9                   graph shall be applied separately with re-  
 10                  spect to each class of securities and em-  
 11                  ployer real property.

12                  “(ii) EXCEPTION FOR CERTAIN PAR-  
 13                  TICIPANTS AGED 55 OR OVER.—Clause (i)  
 14                  shall not apply to an applicable individual  
 15                  who is a participant who has attained age  
 16                  55 and completed at least 3 years of serv-  
 17                  ice before the first plan year beginning  
 18                  after December 31, 2005.

19                  “(B) APPLICABLE PERCENTAGE.—For  
 20                  purposes of subparagraph (A), the applicable  
 21                  percentage shall be determined as follows:

<b>Plan year to which paragraph (3) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d and following .....	100.”.

1           (2) CONFORMING AMENDMENT.—Section  
2           407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is  
3           amended by adding at the end the following:

**“(D) For diversification requirements for quali-  
          fying employer securities and qualifying real prop-  
          erty held in certain individual account plans, see  
          section 204(j).”.**

4           (c) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in para-  
6           graphs (2) and (3), the amendments made by this  
7           section shall apply to plan years beginning after De-  
8           cember 31, 2005.

9           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
10          GAINED AGREEMENTS.—In the case of a plan main-  
11          tained pursuant to 1 or more collective bargaining  
12          agreements between employee representatives and 1  
13          or more employers ratified on or before the date of  
14          the enactment of this Act, paragraph (1) shall be  
15          applied to benefits pursuant to, and individuals cov-  
16          ered by, any such agreement by substituting for  
17          “December 31, 2005” the earlier of—

18                 (A) the later of—

19                         (i) December 31, 2006, or

20                         (ii) the date on which the last of such  
21                         collective bargaining agreements termi-  
22                         nates (determined without regard to any

1 extension thereof after such date of enact-  
2 ment), or

3 (B) December 31, 2007.

4 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-  
5 CURITIES HELD IN AN ESOP.—

6 (A) IN GENERAL.—In the case of employer  
7 securities to which this paragraph applies, the  
8 amendments made by this section shall apply to  
9 plan years beginning after the earlier of—

10 (i) December 31, 2006, or

11 (ii) the first date on which the fair  
12 market value of such securities exceeds the  
13 guaranteed minimum value described in  
14 subparagraph (B)(ii).

15 (B) APPLICABLE SECURITIES.—This para-  
16 graph shall apply to employer securities which  
17 are attributable to employer contributions other  
18 than elective deferrals, and which, on Sep-  
19 tember 17, 2003—

20 (i) consist of preferred stock, and

21 (ii) are within an employee stock own-  
22 ership plan (as defined in section  
23 4975(e)(7) of the Internal Revenue Code  
24 of 1986), the terms of which provide that  
25 the value of the securities cannot be less

1 than the guaranteed minimum value speci-  
 2 fied by the plan on such date.

3 (C) COORDINATION WITH TRANSITION  
 4 RULE.—In applying section 401(a)(35)(H) of  
 5 the Internal Revenue Code of 1986 and section  
 6 204(j)(7) of the Employee Retirement Income  
 7 Security Act of 1974 (as added by this section)  
 8 to employer securities to which this paragraph  
 9 applies, the applicable percentage shall be de-  
 10 termined without regard to this paragraph.

11 **SEC. 102. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**  
 12 **CURITIES OR REAL PROPERTY.**

13 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

14 (1) EXCISE TAX.—Chapter 43 of the Internal  
 15 Revenue Code of 1986 (relating to qualified pension,  
 16 etc., plans) is amended by adding at the end the fol-  
 17 lowing new section:

18 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-**  
 19 **TION PLANS TO PROVIDE NOTICE OF FREE-**  
 20 **DOM TO DIVEST EMPLOYER SECURITIES.**

21 “(a) IMPOSITION OF TAX.—There is hereby imposed  
 22 a tax on the failure of a defined contribution plan to meet  
 23 the requirements of subsection (e) with respect to any par-  
 24 ticipant or beneficiary.

25 “(b) AMOUNT OF TAX.—

1           “(1) IN GENERAL.—The amount of the tax im-  
2           posed by subsection (a) on any failure with respect  
3           to any participant or beneficiary shall be \$100 for  
4           each day in the noncompliance period with respect to  
5           the failure.

6           “(2) NONCOMPLIANCE PERIOD.—For purposes  
7           of this section, the term ‘noncompliance period’  
8           means, with respect to any failure, the period begin-  
9           ning on the date the failure first occurs and ending  
10          on the date the notice to which the failure relates is  
11          provided or the failure is otherwise corrected.

12          “(c) LIMITATIONS ON AMOUNT OF TAX.—

13                 “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
14                 DISCOVERED AND REASONABLE DILIGENCE EXER-  
15                 CISED.—No tax shall be imposed by subsection (a)  
16                 on any failure during any period for which it is es-  
17                 tablished to the satisfaction of the Secretary that  
18                 any person subject to liability for tax under sub-  
19                 section (d) did not know that the failure existed and  
20                 exercised reasonable diligence to meet the require-  
21                 ments of subsection (e).

22                 “(2) TAX NOT TO APPLY TO FAILURES COR-  
23                 RECTED WITHIN 30 DAYS.—No tax shall be imposed  
24                 by subsection (a) on any failure if—

1           “(A) any person subject to liability for the  
2 tax under subsection (d) exercised reasonable  
3 diligence to meet the requirements of subsection  
4 (e), and

5           “(B) such person provides the notice de-  
6 scribed in subsection (e) during the 30-day pe-  
7 riod beginning on the first date such person  
8 knew, or exercising reasonable diligence should  
9 have known, that such failure existed.

10           “(3) OVERALL LIMITATION FOR UNINTEN-  
11 TIONAL FAILURES.—

12           “(A) IN GENERAL.—If the person subject  
13 to liability for tax under subsection (d) exer-  
14 cised reasonable diligence to meet the require-  
15 ments of subsection (e), the tax imposed by  
16 subsection (a) for failures during the taxable  
17 year of the employer (or, in the case of a multi-  
18 employer plan, the taxable year of the trust  
19 forming part of the plan) shall not exceed  
20 \$500,000. For purposes of the preceding sen-  
21 tence, all multiemployer plans of which the  
22 same trust forms a part shall be treated as 1  
23 plan.

24           “(B) TAXABLE YEARS IN THE CASE OF  
25 CERTAIN CONTROLLED GROUPS.—For purposes

1 of this paragraph, if all persons who are treated  
2 as a single employer for purposes of this section  
3 do not have the same taxable year, the taxable  
4 years taken into account shall be determined  
5 under principles similar to the principles of sec-  
6 tion 1561.

7 “(4) WAIVER BY SECRETARY.—In the case of a  
8 failure which is due to reasonable cause and not to  
9 willful neglect, the Secretary may waive part or all  
10 of the tax imposed by subsection (a) to the extent  
11 that the payment of such tax would be excessive or  
12 otherwise inequitable relative to the failure involved.

13 “(d) LIABILITY FOR TAX.—The following shall be lia-  
14 ble for the tax imposed by subsection (a):

15 “(1) In the case of a plan not described in  
16 paragraph (2), the employer.

17 “(2) In the case of a multiemployer plan, the  
18 plan.

19 “(e) NOTICE OF RIGHT TO DIVEST.—Not later than  
20 30 days before the first date on which an applicable indi-  
21 vidual of an applicable defined contribution plan is eligible  
22 to exercise the right under section 401(a)(35) to direct  
23 the proceeds from the divestment of employer securities  
24 or employer real property with respect to any type of con-

1 tribution, the plan administrator shall provide to such in-  
 2 dividual a notice—

3 “(1) setting forth such right under such sec-  
 4 tion, and

5 “(2) describing the importance of diversifying  
 6 the investment of retirement account assets.

7 The notice required by this subsection shall be written in  
 8 a manner calculated to be understood by the average plan  
 9 participant and may be delivered in written, electronic, or  
 10 other appropriate form to the extent that such form is rea-  
 11 sonably accessible to the applicable individual.

12 “(f) DEFINITIONS.—Any term used in this section  
 13 which is also used in section 401(a)(35) shall have the  
 14 meaning given such term by section 401(a)(35).”

15 (2) AGGREGATION.—Section 414(t) of such  
 16 Code is amended by striking “or 4980B” and insert-  
 17 ing “4980B, or 4980H”.

18 (3) CLERICAL AMENDMENT.—The table of sec-  
 19 tions for chapter 43 of such Code is amended by  
 20 adding at the end the following new item:

“Sec. 4980H. Failure of certain defined contribution plans to provide notice of  
 freedom to divest employer securities.”.

21 (b) AMENDMENTS OF ERISA.—

22 (1) IN GENERAL.—Section 101 of the Employee  
 23 Retirement Income Security Act of 1974 (29 U.S.C.  
 24 1021) is amended by redesignating subsection (j) as

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

3 “(j) NOTICE OF RIGHT TO DIVEST.—Not later than  
4 30 days before the first date on which an applicable indi-  
5 vidual of an applicable individual account plan is eligible  
6 to exercise the right under section 204(j) to direct the pro-  
7 ceeds from the divestment of employer securities or em-  
8 ployer real property with respect to any type of contribu-  
9 tion, the administrator shall provide to such individual a  
10 notice—

11 “(1) setting forth such right under such sec-  
12 tion, and

13 “(2) describing the importance of diversifying  
14 the investment of retirement account assets.

15 The notice required by this subsection shall be written in  
16 a manner calculated to be understood by the average plan  
17 participant and may be delivered in written, electronic, or  
18 other appropriate form to the extent that such form is rea-  
19 sonably accessible to the applicable individual.”

20 (2) PENALTIES.—Section 502(c)(7) of the Em-  
21 ployee Retirement Income Security Act of 1974 (29  
22 U.S.C. 1132(c)(7)) is amended by striking “section  
23 101(j)” and inserting “subsection (i) or (j) of sec-  
24 tion 101”.

1 (c) MODEL NOTICE.—The Secretary of the Treasury  
2 shall, within 180 days after the date of the enactment of  
3 this subsection, prescribe a model notice for purposes of  
4 satisfying the requirements of the amendments made by  
5 this section.

6 (d) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendments made by  
8 this section shall apply to plan years beginning after  
9 December 31, 2005.

10 (2) TRANSITION RULE.—If notice under section  
11 4980H(e) of the Internal Revenue Code of 1986 or  
12 section 101(j) of the Employee Retirement Income  
13 Security Act of 1974 (as added by this section)  
14 would otherwise be required to be provided before  
15 the 90th day after the date of the enactment of this  
16 Act, such notice shall not be required to be provided  
17 until such 90th day.

18 **SEC. 103. PERIODIC PENSION BENEFIT STATEMENTS.**

19 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

20 (1) EXCISE TAX.—Chapter 43 of the Internal  
21 Revenue Code of 1986 (relating to qualified pension,  
22 etc., plans), as amended by this Act, is amended by  
23 adding at the end the following new section:

1 **“SEC. 4980I. FAILURE OF CERTAIN PENSION PLANS TO PRO-**  
2 **VIDE REQUIRED INFORMATION.**

3 “(a) IMPOSITION OF TAX.—There is hereby imposed  
4 a tax on the failure of an applicable pension plan to meet  
5 the requirements of subsection (e) with respect to any par-  
6 ticipant or beneficiary.

7 “(b) AMOUNT OF TAX.—

8 “(1) IN GENERAL.—The amount of the tax im-  
9 posed by subsection (a) on any failure with respect  
10 to any participant or beneficiary shall be \$100 for  
11 each day in the noncompliance period with respect to  
12 the failure.

13 “(2) NONCOMPLIANCE PERIOD.—For purposes  
14 of this section, the term ‘noncompliance period’  
15 means, with respect to any failure, the period begin-  
16 ning on the date the failure first occurs and ending  
17 on the date the statement to which the failure re-  
18 lates is provided or the failure is otherwise corrected.

19 “(c) LIMITATIONS ON AMOUNT OF TAX.—

20 “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
21 DISCOVERED AND REASONABLE DILIGENCE EXER-  
22 CISED.—No tax shall be imposed by subsection (a)  
23 on any failure during any period for which it is es-  
24 tablished to the satisfaction of the Secretary that  
25 any person subject to liability for tax under sub-  
26 section (d) did not know that the failure existed and

1 exercised reasonable diligence to meet the require-  
2 ments of subsection (e).

3 “(2) TAX NOT TO APPLY TO FAILURES COR-  
4 RECTED WITHIN 30 DAYS.—No tax shall be imposed  
5 by subsection (a) on any failure if—

6 “(A) any person subject to liability for the  
7 tax under subsection (d) exercised reasonable  
8 diligence to meet the requirements of subsection  
9 (e), and

10 “(B) such person provides the statement  
11 described in subsection (e) during the 30-day  
12 period beginning on the first date such person  
13 knew, or exercising reasonable diligence should  
14 have known, that such failure existed.

15 “(3) OVERALL LIMITATION FOR UNINTEN-  
16 TIONAL FAILURES.—

17 “(A) IN GENERAL.—If the person subject  
18 to liability for tax under subsection (d) exer-  
19 cised reasonable diligence to meet the require-  
20 ments of subsection (e), the tax imposed by  
21 subsection (a) for failures during the taxable  
22 year of the employer (or, in the case of a multi-  
23 employer plan, the taxable year of the trust  
24 forming part of the plan) shall not exceed  
25 \$500,000. For purposes of the preceding sen-

1           tence, all multiemployer plans of which the  
2           same trust forms a part shall be treated as 1  
3           plan.

4           “(B) TAXABLE YEARS IN THE CASE OF  
5           CERTAIN CONTROLLED GROUPS.—For purposes  
6           of this paragraph, if all persons who are treated  
7           as a single employer for purposes of this section  
8           do not have the same taxable year, the taxable  
9           years taken into account shall be determined  
10          under principles similar to the principles of sec-  
11          tion 1561.

12          “(4) WAIVER BY SECRETARY.—In the case of a  
13          failure which is due to reasonable cause and not to  
14          willful neglect, the Secretary may waive part or all  
15          of the tax imposed by subsection (a) to the extent  
16          that the payment of such tax would be excessive or  
17          otherwise inequitable relative to the failure involved.

18          “(d) LIABILITY FOR TAX.—The following shall be lia-  
19          ble for the tax imposed by subsection (a):

20                 “(1) In the case of a plan not described in  
21                 paragraph (2) or (3), the employer.

22                 “(2) In the case of a multiemployer plan, the  
23                 plan.

1           “(3) In the case of an arrangement described in  
2           subsection (e)(4), the person required to provide the  
3           statement under subsection (e).

4           “(e) REQUIREMENTS TO PROVIDE PENSION BENEFIT  
5 STATEMENTS.—

6           “(1) REQUIREMENTS.—

7           “(A) DEFINED CONTRIBUTION PLAN.—

8           The administrator of an applicable pension plan  
9           which is a defined contribution plan shall fur-  
10          nish a pension benefit statement described in  
11          paragraph (2)—

12                   “(i) at least once each calendar quar-  
13                   ter to a participant or beneficiary who has  
14                   the right to direct the investment of assets  
15                   in his or her account under the plan,

16                   “(ii) at least once each calendar year  
17                   to a participant or beneficiary who has his  
18                   or her own account under the plan but who  
19                   does not have the right to direct the invest-  
20                   ment of assets in that account, and

21                   “(iii) upon written request to a plan  
22                   beneficiary who is not a participant or ben-  
23                   eficiary described in clause (i) or (ii), ex-  
24                   cept that this clause shall apply to only 1  
25                   request during any 12-month period.

1           “(B) DEFINED BENEFIT PLAN.—The ad-  
 2           ministrator of an applicable pension plan which  
 3           is a defined benefit plan shall furnish a pension  
 4           benefit statement described in paragraph (2)—

5                   “(i) at least once every 3 years to  
 6                   each participant who has a nonforfeitable  
 7                   accrued benefit and who is employed by  
 8                   the employer maintaining the plan at the  
 9                   time the statement is to be furnished, and

10                   “(ii) to a participant or beneficiary of  
 11                   the plan upon written request, except that  
 12                   this clause shall apply to only 1 request  
 13                   during any 12-month period.

14           Information furnished under clause (i) to a par-  
 15           ticipant may be based on reasonable estimates  
 16           determined under regulations prescribed by the  
 17           Secretary of Labor, in consultation with the  
 18           Pension Benefit Guaranty Corporation.

19           “(2) STATEMENTS.—

20                   “(A) IN GENERAL.—A pension benefit  
 21                   statement furnished under paragraph (1)—

22                   “(i) shall indicate, on the basis of the  
 23                   latest available information—

24                           “(I) the total benefits accrued,  
 25                           and

1                   “(II) the nonforfeitable pension  
2                   benefits, if any, which have accrued,  
3                   or the earliest date on which benefits  
4                   will become nonforfeitable,

5                   “(ii) shall include an explanation of  
6                   any permitted disparity under section  
7                   401(l) or any floor-offset arrangement that  
8                   may be applied in determining any accrued  
9                   benefits described in clause (i),

10                   “(iii) shall be written in a manner cal-  
11                   culated to be understood by the average  
12                   plan participant, and

13                   “(iv) may be delivered in written, elec-  
14                   tronic, or other appropriate form to the ex-  
15                   tent such form is reasonably accessible to  
16                   the participant or beneficiary.

17                   “(B) ADDITIONAL INFORMATION.—In the  
18                   case of a defined contribution plan, any pension  
19                   benefit statement under clause (i) or (ii) of  
20                   paragraph (1)(A) shall include—

21                   “(i) the value of each investment to  
22                   which assets in the individual account have  
23                   been allocated, determined as of the most  
24                   recent valuation date under the plan, in-  
25                   cluding the value of any assets held in the

1 form of employer securities or employer  
2 real property, without regard to whether  
3 such securities or real property were con-  
4 tributed by the plan sponsor or acquired at  
5 the direction of the plan or of the partici-  
6 pant or beneficiary, and

7 “(ii) in the case of a pension benefit  
8 statement under paragraph (1)(A)(i)—

9 “(I) an explanation of any limita-  
10 tions or restrictions on any right of  
11 the participant or beneficiary under  
12 the plan to direct an investment, and

13 “(II) a notice that investments in  
14 any individual account may not be  
15 adequately diversified if the value of  
16 any investment in the account exceeds  
17 20 percent of the fair market value of  
18 all investments in the account.

19 “(C) ALTERNATIVE NOTICE.—The require-  
20 ments of subparagraph (A)(i)(II) are met if, at  
21 least annually and in accordance with require-  
22 ments of the Secretary of Labor, the plan—

23 “(i) updates the information described  
24 in such paragraph which is provided in the  
25 pension benefit statement, or

1           “(ii) provides in a separate statement  
2           such information as is necessary to enable  
3           a participant or beneficiary to determine  
4           their nonforfeitable vested benefits.

5           “(3) DEFINED BENEFIT PLANS.—

6           “(A) ALTERNATIVE NOTICE.—In the case  
7           of a defined benefit plan, the requirements of  
8           paragraph (1)(B)(i) shall be treated as met  
9           with respect to a participant if at least once  
10          each year the administrator provides to the par-  
11          ticipant notice of the availability of the pension  
12          benefit statement and the ways in which the  
13          participant may obtain such statement. Such  
14          notice may be delivered in written, electronic, or  
15          other appropriate form to the extent such form  
16          is reasonably accessible to the participant.

17          “(B) YEARS IN WHICH NO BENEFITS AC-  
18          CRUE.—The Secretary may provide that years  
19          in which no employee or former employee bene-  
20          fits (within the meaning of section 410(b))  
21          under the plan need not be taken into account  
22          in determining the 3-year period under para-  
23          graph (1)(B)(i).

24          “(4) SPECIAL RULE FOR CERTAIN ANNU-  
25          ITIES.—In the case of an annuity contract or custo-

1 dial account described in section 403(b) which is not  
2 a plan established or maintained by the employer,  
3 the pension benefit statement under this subsection  
4 shall be furnished by the issuer of the contract, the  
5 custodian of the account, or such other person as is  
6 specified by the Secretary.

7 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-  
8 poses of this section—

9 “(1) APPLICABLE PENSION PLAN.—The term  
10 ‘applicable pension plan’ means a plan described in  
11 clause (i), (ii), or (iv) of section 219(g)(5)(A) other  
12 than a one-participant retirement plan (as defined in  
13 section 401(a)(35)(E)(iv)).

14 “(2) EXCEPTION FOR GOVERNMENT AND  
15 CHURCH PLANS.—This section shall not apply to any  
16 governmental or church plan. For purposes of this  
17 paragraph, the terms ‘governmental plan’ and  
18 ‘church plan’ have the meanings given such terms by  
19 section 414.”

20 (2) AGGREGATION.—Section 414(t) of such  
21 Code, as amended by this Act, is amended by strik-  
22 ing “or 4980H” and inserting “4980H, or 4980I”.

23 (3) CLERICAL AMENDMENT.—The table of sec-  
24 tions for chapter 43 of such Code, as amended by

1       this Act, is amended by adding at the end the fol-  
2       lowing new item:

“Sec. 4980I. Failure of certain pension plans to provide required information.”.

3       (b) AMENDMENTS OF ERISA.—

4             (1) IN GENERAL.—Section 105(a) of the Em-  
5       ployee Retirement Income Security Act of 1974 (29  
6       U.S.C. 1025(a)) is amended to read as follows:

7       “(a) REQUIREMENTS TO PROVIDE PENSION BEN-  
8       EFIT STATEMENTS.—

9             “(1) REQUIREMENTS.—

10            “(A) INDIVIDUAL ACCOUNT PLAN.—The  
11       administrator of an individual account plan  
12       (other than a one-participant retirement plan  
13       described in section 101(i)(8)(B)) shall furnish  
14       a pension benefit statement—

15            “(i) at least once each calendar quar-  
16       ter to a participant or beneficiary who has  
17       the right to direct the investment of assets  
18       in his or her account under the plan,

19            “(ii) at least once each calendar year  
20       to a participant or beneficiary who has his  
21       or her own account under the plan but  
22       does not have the right to direct the invest-  
23       ment of assets in that account, and

1                   “(iii) upon written request to a plan  
2                   beneficiary not described in clause (i) or  
3                   (ii).

4                   “(B) DEFINED BENEFIT PLAN.—The ad-  
5                   ministrator of a defined benefit plan (other  
6                   than a one-participant retirement plan de-  
7                   scribed in section 101(i)(8)(B)) shall furnish a  
8                   pension benefit statement—

9                   “(i) at least once every 3 years to  
10                  each participant with a nonforfeitable ac-  
11                  crued benefit and who is employed by the  
12                  employer maintaining the plan at the time  
13                  the statement is to be furnished, and

14                  “(ii) to a participant or beneficiary of  
15                  the plan upon written request.

16                  Information furnished under clause (i) to a par-  
17                  ticipant may be based on reasonable estimates  
18                  determined under regulations prescribed by the  
19                  Secretary, in consultation with the Pension  
20                  Benefit Guaranty Corporation.

21                  “(2) STATEMENTS.—

22                  “(A) IN GENERAL.—A pension benefit  
23                  statement under paragraph (1)—

24                  “(i) shall indicate, on the basis of the  
25                  latest available information—

1                   “(I) the total benefits accrued,  
2                   and

3                   “(II) the nonforfeitable pension  
4                   benefits, if any, which have accrued,  
5                   or the earliest date on which benefits  
6                   will become nonforfeitable,

7                   “(ii) shall include an explanation of  
8                   any permitted disparity under section  
9                   401(l) of the Internal Revenue Code of  
10                  1986 or any floor-offset arrangement that  
11                  may be applied in determining any accrued  
12                  benefits described in clause (i),

13                  “(iii) shall be written in a manner cal-  
14                  culated to be understood by the average  
15                  plan participant, and

16                  “(iv) may be delivered in written, elec-  
17                  tronic, or other appropriate form to the ex-  
18                  tent such form is reasonably accessible to  
19                  the participant or beneficiary.

20                  “(B) ADDITIONAL INFORMATION.—In the  
21                  case of an individual account plan, any pension  
22                  benefit statement under clause (i) or (ii) of  
23                  paragraph (1)(A) shall include—

24                  “(i) the value of each investment to  
25                  which assets in the individual account have

1           been allocated, determined as of the most  
2           recent valuation date under the plan, in-  
3           cluding the value of any assets held in the  
4           form of employer securities or employer  
5           real property, without regard to whether  
6           such securities or real property were con-  
7           tributed by the plan sponsor or acquired at  
8           the direction of the plan or of the partici-  
9           pant or beneficiary, and

10           “(ii) in the case of a pension benefit  
11           statement under paragraph (1)(A)(i)—

12                   “(I) an explanation of any limita-  
13                   tions or restrictions on any right of  
14                   the participant or beneficiary under  
15                   the plan to direct an investment, and

16                   “(II) a notice that investments in  
17                   any individual account may not be  
18                   adequately diversified if the value of  
19                   any investment in the account exceeds  
20                   20 percent of the fair market value of  
21                   all investments in the account.

22           “(C) ALTERNATIVE NOTICE.—The require-  
23           ments of subparagraph (A)(i)(II) are met if, at  
24           least annually and in accordance with require-  
25           ments of the Secretary, the plan—

1           “(i) updates the information described  
2           in such paragraph which is provided in the  
3           pension benefit statement, or

4           “(ii) provides in a separate statement  
5           such information as is necessary to enable  
6           a participant or beneficiary to determine  
7           their nonforfeitable vested benefits.

8           “(3) DEFINED BENEFIT PLANS.—

9           “(A) ALTERNATIVE NOTICE.—In the case  
10          of a defined benefit plan, the requirements of  
11          paragraph (1)(B)(i) shall be treated as met  
12          with respect to a participant if at least once  
13          each year the administrator provides to the par-  
14          ticipant notice of the availability of the pension  
15          benefit statement and the ways in which the  
16          participant may obtain such statement. Such  
17          notice may be delivered in written, electronic, or  
18          other appropriate form to the extent such form  
19          is reasonably accessible to the participant.

20          “(B) YEARS IN WHICH NO BENEFITS AC-  
21          CRUE.—The Secretary may provide that years  
22          in which no employee or former employee bene-  
23          fits (within the meaning of section 410(b) of  
24          the Internal Revenue Code of 1986) under the  
25          plan need not be taken into account in deter-

1 mining the 3-year period under paragraph  
2 (1)(B)(i).”

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 105 of the Employee Retirement  
5 Income Security Act of 1974 (29 U.S.C.  
6 1025) is amended by striking subsection (d).

7 (B) Section 105(b) of such Act (29 U.S.C.  
8 1025(b)) is amended to read as follows:

9 “(b) LIMITATION ON NUMBER OF STATEMENTS.—In  
10 no case shall a participant or beneficiary of a plan be enti-  
11 tled to more than 1 statement described in subparagraph  
12 (A)(iii) or (B)(ii) of subsection (a)(1), whichever is appli-  
13 cable, in any 12-month period.”

14 (C) Section 502(c)(1) of such Act (29  
15 U.S.C. 1132(c)(1)) is amended by striking “or  
16 section 101(f)” and inserting “section 101(f),  
17 or section 105(a)”.

18 (c) MODEL STATEMENTS.—

19 (1) IN GENERAL.—The Secretary of Labor  
20 shall, within 180 days after the date of the enact-  
21 ment of this section, develop 1 or more model benefit  
22 statements that are written in a manner calculated  
23 to be understood by the average plan participant and  
24 that may be used by plan administrators in com-  
25 plying with the requirements of section 4980I of the

1 Internal Revenue Code of 1986 and section 105 of  
2 the Employee Retirement Income Security Act of  
3 1974.

4 (2) INTERIM FINAL RULES.—The Secretary of  
5 Labor may promulgate any interim final rules as the  
6 Secretary determines appropriate to carry out the  
7 provisions of this subsection.

8 (d) EFFECTIVE DATE.—

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

12 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
13 GAINED AGREEMENTS.—In the case of a plan main-  
14 tained pursuant to 1 or more collective bargaining  
15 agreements between employee representatives and 1  
16 or more employers ratified on or before the date of  
17 the enactment of this Act, paragraph (1) shall be  
18 applied to benefits pursuant to, and individuals cov-  
19 ered by, any such agreement by substituting for  
20 “December 31, 2006” the earlier of—

21 (A) the later of—

22 (i) December 31, 2007, or

23 (ii) the date on which the last of such  
24 collective bargaining agreements termi-  
25 nates (determined without regard to any

1 extension thereof after such date of enact-  
 2 ment), or

3 (B) December 31, 2008.

4 **SEC. 104. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**  
 5 **BLACKOUT PERIODS.**

6 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

7 (1) EXCISE TAX.—

8 (A) IN GENERAL.—Chapter 43 of the In-  
 9 ternal Revenue Code of 1986 (relating to quali-  
 10 fied pension, etc., plans), as amended by this  
 11 Act, is amended by adding at the end the fol-  
 12 lowing new section:

13 **“SEC. 4980J. FAILURE OF CERTAIN DEFINED CONTRIBU-**  
 14 **TION PLANS TO PROVIDE NOTICE OF BLACK-**  
 15 **OUT PERIODS.**

16 “(a) IMPOSITION OF TAX.—There is hereby imposed  
 17 a tax on the failure of any defined contribution plan to  
 18 which this section applies to meet the requirements of sub-  
 19 section (e) with respect to any participant or beneficiary.

20 “(b) AMOUNT OF TAX.—

21 “(1) IN GENERAL.—The amount of the tax im-  
 22 posed by subsection (a) on any failure with respect  
 23 to any participant or beneficiary shall be \$100 for  
 24 each day in the noncompliance period with respect to  
 25 the failure.

1           “(2) NONCOMPLIANCE PERIOD.—For purposes  
2 of this section, the term ‘noncompliance period’  
3 means, with respect to any failure, the period begin-  
4 ning on the date the failure first occurs and ending  
5 on the date the notice to which the failure relates is  
6 provided or the failure is otherwise corrected.

7           “(c) LIMITATIONS ON AMOUNT OF TAX.—

8           “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
9 DISCOVERED AND REASONABLE DILIGENCE EXER-  
10 CISED.—No tax shall be imposed by subsection (a)  
11 on any failure during any period for which it is es-  
12 tablished to the satisfaction of the Secretary that  
13 any person subject to liability for tax under sub-  
14 section (d) did not know that the failure existed and  
15 exercised reasonable diligence to meet the require-  
16 ments of subsection (e).

17           “(2) TAX NOT TO APPLY TO FAILURES COR-  
18 RECTED AS SOON AS REASONABLY PRACTICABLE.—  
19 No tax shall be imposed by subsection (a) on any  
20 failure if—

21           “(A) any person subject to liability for the  
22 tax under subsection (d) exercised reasonable  
23 diligence to meet the requirements of subsection  
24 (e), and

1           “(B) such person provides the notice de-  
2           scribed in subsection (e) as soon as reasonably  
3           practicable after the first date such person  
4           knew, or exercising reasonable diligence should  
5           have known, that such failure existed.

6           “(3) OVERALL LIMITATION FOR UNINTEN-  
7           TIONAL FAILURES.—

8           “(A) IN GENERAL.—If the person subject  
9           to liability for tax under subsection (d) exer-  
10          cised reasonable diligence to meet the require-  
11          ments of subsection (e), the tax imposed by  
12          subsection (a) for failures during the taxable  
13          year of the employer (or, in the case of a multi-  
14          employer plan, the taxable year of the trust  
15          forming part of the plan) shall not exceed  
16          \$500,000. For purposes of the preceding sen-  
17          tence, all multiemployer plans of which the  
18          same trust forms a part shall be treated as 1  
19          plan.

20          “(B) TAXABLE YEARS IN THE CASE OF  
21          CERTAIN CONTROLLED GROUPS.—For purposes  
22          of this paragraph, if all persons who are treated  
23          as a single employer for purposes of this section  
24          do not have the same taxable year, the taxable  
25          years taken into account shall be determined

1 under principles similar to the principles of sec-  
2 tion 1561.

3 “(4) WAIVER BY SECRETARY.—In the case of a  
4 failure which is due to reasonable cause and not to  
5 willful neglect, the Secretary may waive part or all  
6 of the tax imposed by subsection (a) to the extent  
7 that the payment of such tax would be excessive or  
8 otherwise inequitable relative to the failure involved.

9 “(d) LIABILITY FOR TAX.—The following shall be lia-  
10 ble for the tax imposed by subsection (a):

11 “(1) In the case of a plan not described in  
12 paragraph (2) or (3), the employer.

13 “(2) In the case of a multiemployer plan, the  
14 plan.

15 “(3) In the case of an arrangement described in  
16 subsection (e)(1)(B), the person required to provide  
17 the notice under subsection (e).

18 “(e) NOTICE OF BLACKOUT PERIODS TO PARTICI-  
19 PANT OR BENEFICIARY UNDER DEFINED CONTRIBUTION  
20 PLAN.—

21 “(1) IN GENERAL.—

22 “(A) DUTIES OF PLAN ADMINISTRATOR.—  
23 In advance of the commencement of any black-  
24 out period with respect to a defined contribu-  
25 tion plan, the plan administrator shall notify

1 the plan participants and beneficiaries who are  
2 affected by such action in accordance with this  
3 subsection.

4 “(B) SPECIAL RULE FOR CERTAIN ANNU-  
5 ITIES.—In the case of an annuity contract or  
6 custodial account described in section 403(b)  
7 which is not a plan established or maintained  
8 by the employer, the notice shall be furnished  
9 by the issuer of the contract, the custodian of  
10 the account, or such other person as is specified  
11 by the Secretary.

12 “(2) NOTICE REQUIREMENTS.—

13 “(A) IN GENERAL.—The notices described  
14 in paragraph (1) shall be written in a manner  
15 calculated to be understood by the average plan  
16 participant and shall include—

17 “(i) the reasons for the blackout pe-  
18 riod,

19 “(ii) an identification of the invest-  
20 ments and other rights affected,

21 “(iii) the expected beginning date and  
22 length of the blackout period,

23 “(iv) in the case of investments af-  
24 fected, a statement that the participant or  
25 beneficiary should evaluate the appro-

1           priateness of their current investment deci-  
2           sions in light of their inability to direct or  
3           diversify assets credited to their accounts  
4           during the blackout period, and

5           “(v) such other matters as the Sec-  
6           retary of Labor may require by regulation.

7           “(B) NOTICE TO PARTICIPANTS AND  
8           BENEFICIARIES.—Except as otherwise provided  
9           in this subsection, notices described in para-  
10          graph (1) shall be furnished to all participants  
11          and beneficiaries under the plan to whom the  
12          blackout period applies at least 30 days in ad-  
13          vance of the blackout period.

14          “(C) EXCEPTION TO 30-DAY NOTICE RE-  
15          QUIREMENT.—In any case in which—

16               “(i) a deferral of the blackout period  
17               would violate the requirements of subpara-  
18               graph (A) or (B) of section 404(a)(1) of  
19               the Employee Retirement Income Security  
20               Act of 1974, and a fiduciary of the plan  
21               reasonably so determines in writing, or

22               “(ii) the inability to provide the 30-  
23               day advance notice is due to events that  
24               were unforeseeable or circumstances be-  
25               yond the reasonable control of the plan ad-

1            administrator, and a fiduciary of the plan  
2            reasonably so determines in writing,  
3            subparagraph (B) shall not apply, and the no-  
4            tice shall be furnished to all participants and  
5            beneficiaries under the plan to whom the black-  
6            out period applies as soon as reasonably pos-  
7            sible under the circumstances unless such a no-  
8            tice in advance of the termination of the black-  
9            out period is impracticable.

10            “(D) WRITTEN NOTICE.—The notice re-  
11            quired to be provided under this subsection  
12            shall be in writing, except that such notice may  
13            be in electronic or other form to the extent that  
14            such form is reasonably accessible to the recipi-  
15            ent.

16            “(E) NOTICE TO ISSUERS OF EMPLOYER  
17            SECURITIES SUBJECT TO BLACKOUT PERIOD.—  
18            In the case of any blackout period in connection  
19            with a defined contribution plan, the plan ad-  
20            ministrator shall provide timely notice of such  
21            blackout period to the issuer of any employer  
22            securities subject to such blackout period.

23            “(3) EXCEPTION FOR BLACKOUT PERIODS  
24            WITH LIMITED APPLICABILITY.—In any case in  
25            which the blackout period applies only to 1 or more

1 participants or beneficiaries in connection with a  
2 merger, acquisition, divestiture, or similar trans-  
3 action involving the plan or plan sponsor and occurs  
4 solely in connection with becoming or ceasing to be  
5 a participant or beneficiary under the plan by reason  
6 of such merger, acquisition, divestiture, or trans-  
7 action, the requirement of this subsection that the  
8 notice be provided to all participants and bene-  
9 ficiaries shall be treated as met if the notice required  
10 under paragraph (1) is provided to such participants  
11 or beneficiaries to whom the blackout period applies  
12 as soon as reasonably practicable.

13 “(4) CHANGES IN LENGTH OF BLACKOUT PE-  
14 RIOD.—If, following the furnishing of the notice pur-  
15 suant to this subsection, there is a change in the be-  
16 ginning date or length of the blackout period (speci-  
17 fied in such notice pursuant to paragraph  
18 (2)(A)(iii)), the administrator shall provide affected  
19 participants and beneficiaries notice of the change as  
20 soon as reasonably practicable. In relation to the ex-  
21 tended blackout period, such notice shall meet the  
22 requirements of paragraph (2)(D) and shall specify  
23 any material change in the matters referred to in  
24 clauses (i) through (v) of paragraph (2)(A).

1           “(5) REGULATORY EXCEPTIONS.—The Sec-  
2           retary of Labor may provide by regulation for addi-  
3           tional exceptions to the requirements of this sub-  
4           section which the Secretary of Labor determines are  
5           in the interests of participants and beneficiaries.

6           “(6) GUIDANCE AND MODEL NOTICES.—The  
7           Secretary of Labor shall issue guidance and model  
8           notices which meet the requirements of this sub-  
9           section.

10           “(7) BLACKOUT PERIOD.—For purposes of this  
11           subsection—

12                   “(A) IN GENERAL.—The term ‘blackout  
13                   period’ means, in connection with a defined con-  
14                   tribution plan, any period for which any ability  
15                   of participants or beneficiaries under the plan,  
16                   which is otherwise available under terms of the  
17                   plan, to direct or diversify assets credited to  
18                   their accounts, to obtain loans from the plan, or  
19                   to obtain distributions from the plan is tempo-  
20                   rarily suspended, limited, or restricted, if such  
21                   suspension, limitation, or restriction is for any  
22                   period of more than 3 consecutive business  
23                   days.

1           “(B) EXCLUSIONS.—The term ‘blackout  
2           period’ does not include a suspension, limita-  
3           tion, or restriction—

4                   “(i) which occurs by reason of the ap-  
5                   plication of the securities laws (as defined  
6                   in section 3(a)(47) of the Securities Ex-  
7                   change Act of 1934),

8                   “(ii) which is a change to the plan  
9                   which provides for a regularly scheduled  
10                  suspension, limitation, or restriction which  
11                  is disclosed to participants or beneficiaries  
12                  through any summary of material modi-  
13                  fications, any materials describing specific  
14                  investment alternatives under the plan, or  
15                  any changes thereto, or

16                  “(iii) which applies only to 1 or more  
17                  individuals, each of whom is the partici-  
18                  pant, an alternate payee (as defined in sec-  
19                  tion 414(p)(8)), or any other beneficiary  
20                  pursuant to a qualified domestic relations  
21                  order (as defined in section 414(p)(1)(A)).

22           “(8) DEFINED CONTRIBUTION PLAN TO WHICH  
23           SECTION APPLIES.—

24                   “(A) IN GENERAL.—Except as provided in  
25                   this paragraph, this section applies to any de-

1            fined contribution plan described in clause (i),  
 2            (ii), or (iv) of section 219(g)(5)(A).

3            “(B) EXCEPTION FOR ONE-PARTICIPANT  
 4            RETIREMENT PLAN.—This section shall not  
 5            apply to a one-participant retirement plan (as  
 6            defined in section 401(a)(35)(E)(iv)).

7            “(C) EXCEPTION FOR GOVERNMENTAL  
 8            AND CHURCH PLANS.—This section shall not  
 9            apply to governmental and church plans. For  
 10           purposes of this subparagraph, the terms ‘gov-  
 11           ernmental plan’ and ‘church plan’ have the  
 12           meanings given such terms by section 414.”

13           (B) AGGREGATION.—Section 414(t) of  
 14           such Code, as amended by this Act, is amended  
 15           by striking “or 4980I” and inserting “4980I, or  
 16           4980J”.

17           (C) CLERICAL AMENDMENT.—The table of  
 18           sections for chapter 43 of such Code is amend-  
 19           ed by adding at the end the following new item:

“Sec. 4980J. Failure of applicable defined contribution plan to provide notice  
 of blackout periods.”.

20           (2) EFFECTIVE DATE.—The amendments made  
 21           by this subsection shall apply to failures after the  
 22           date of the enactment of this Act.

23           (b) AMENDMENTS OF ERISA.—

1           (1) IN GENERAL.—Section 101(i) of the Em-  
2           ployee Retirement Income Security Act of 1974 (29  
3           U.S.C. 1021(i)) is amended—

4                   (A) by striking clause (i) of paragraph  
5           (8)(B) and inserting:

6                           “(i) on the first day of the plan  
7                           year—

8                                   “(I) covered only one individual  
9                                   (or the individual and the individual’s  
10                                   spouse) and the individual owned 100  
11                                   percent of the plan sponsor (whether  
12                                   or not incorporated), or

13                                   “(II) covered only one or more  
14                                   partners (or partners and their  
15                                   spouses) in the plan sponsor,”

16                   (B) by striking “employer” and “employ-  
17                   er’s” in paragraph (8)(B)(iii) and inserting “in-  
18                   dividual” and “individual’s”, respectively,

19                   (C) by striking “leases employees” in para-  
20                   graph (8)(B)(v) and inserting “uses the services  
21                   of leased employees (within the meaning of sec-  
22                   tion 414(n) of the Internal Revenue Code of  
23                   1986)”, and

24                   (D) by adding at the end of paragraph  
25                   (8)(B) the following flush sentence:

1           “For purposes of this paragraph, an individual  
 2           shall be treated as a partner if the individual is  
 3           so treated under section 401(a)(35)(E)(iv) of  
 4           the Internal Revenue Code of 1986.”

5           (2) EFFECTIVE DATE.—The amendments made  
 6           by this subsection shall take effect as if included in  
 7           the provisions of section 306 of Public Law 107–204  
 8           (116 Stat. 745 et seq.).

9   **SEC. 105. ALLOWANCE OF, AND CREDIT FOR, ADDITIONAL**  
 10                   **IRA PAYMENTS IN CERTAIN BANKRUPTCY**  
 11                   **CASES.**

12           (a) ALLOWANCE OF CONTRIBUTIONS.—Section  
 13   219(b)(5) of the Internal Revenue Code of 1986 (relating  
 14   to deductible amount) is amended by redesignating sub-  
 15   paragraph (C) as subparagraph (D) and by inserting after  
 16   subparagraph (B) the following new subparagraph:

17                   “(C) CATCHUP CONTRIBUTIONS FOR CER-  
 18                   TAIN INDIVIDUALS.—

19                           “(i) IN GENERAL.—In the case of an  
 20                           applicable individual who elects to make a  
 21                           qualified retirement contribution in addi-  
 22                           tion to the deductible amount determined  
 23                           under subparagraph (A)—

24                                   “(I) the deductible amount for  
 25                                   any taxable year shall be increased by

1 an amount equal to 3 times the appli-  
2 cable amount determined under sub-  
3 paragraph (B) for such taxable year,  
4 and

5 “(II) subparagraph (B) shall not  
6 apply.

7 “(ii) APPLICABLE INDIVIDUAL.—For  
8 purposes of this subparagraph, the term  
9 ‘applicable individual’ means, with respect  
10 to any taxable year, any individual who  
11 was a qualified participant in a qualified  
12 cash or deferred arrangement (as defined  
13 in section 401(k)) of an employer described  
14 in clause (iii) under which the employer  
15 matched at least 50 percent of the employ-  
16 ee’s contributions to such arrangement  
17 with stock of such employer.

18 “(iii) EMPLOYER DESCRIBED.—An  
19 employer is described in this clause if, in  
20 any taxable year preceding the taxable year  
21 described in clause (ii)—

22 “(I) such employer (or any con-  
23 trolling corporation of such employer)  
24 was a debtor in a case under title 11

1 of the United States Code, or similar  
2 Federal or State law, and

3 “(II) such employer (or any other  
4 person) was subject to an indictment  
5 or conviction resulting from business  
6 transactions related to such case.

7 “(iv) QUALIFIED PARTICIPANT.—For  
8 purposes of clause (ii), the term ‘qualified  
9 participant’ means any applicable indi-  
10 vidual who was a participant in the cash or  
11 deferred arrangement described in clause  
12 (i) on the date that is 6 months before the  
13 filing of the case described in clause (iii).

14 “(v) TERMINATION.—This subpara-  
15 graph shall not apply to taxable years be-  
16 ginning after December 31, 2009.”

17 (b) SAVER’S CREDIT EXPANDED TO INCLUDE  
18 CATCHUP CONTRIBUTIONS.—

19 (1) IN GENERAL.—Section 25B of the Internal  
20 Revenue Code of 1986 (relating to credit for elective  
21 deferrals and IRA contributions by certain individ-  
22 uals) is amended by redesignating subsection (h) as  
23 subsection (i) and by inserting after subsection (g)  
24 the following new subsection:

1       “(h) ADDITIONAL CREDIT FOR CERTAIN CATCHUP  
2 CONTRIBUTIONS.—

3           “(1) IN GENERAL.—In the case of an eligible  
4 individual who is an applicable individual under sec-  
5 tion 219(b)(5)(C) for any taxable year, the amount  
6 of the credit allowable under subsection (a) for the  
7 taxable year shall be increased by 50 percent of so  
8 much of the qualified retirement contributions (as  
9 defined in section 219(e)) of the individual for the  
10 taxable year as exceeds the deductible amount for  
11 the taxable year under section 219(b)(5) (without  
12 regard to subparagraphs (B) and (C) thereof).

13           “(2) COORDINATION WITH OTHER CONTRIBU-  
14 TIONS.—For purposes of this section—

15           “(A) any contribution to which this sub-  
16 section applies shall not be taken into account  
17 in determining the amount of the credit allow-  
18 able under subsection (a) without regard to this  
19 subsection, and

20           “(B) in applying any reduction in qualified  
21 retirement savings contributions under sub-  
22 section (d)(2), the reduction shall be applied  
23 first to qualified retirement savings contribu-  
24 tions other than contributions to which this  
25 subsection applies.”.

1           (2) EXTENSION OF TERMINATION DATE FOR  
2 CATCHUP CREDIT.—Section 25B(i) of such Code, as  
3 redesignated by paragraph (1), is amended by in-  
4 serting “(December 31, 2007, in the case of the por-  
5 tion of the credit allowed under subsection (h))”  
6 after “2006”.

7           (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to taxable years beginning after  
9 December 31, 2004.

10 **TITLE II—INFORMATION TO AS-**  
11 **SIST PENSION PLAN PARTICI-**  
12 **PANTS**

13 **SEC. 201. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
14 **PROVIDE ADEQUATE INVESTMENT EDU-**  
15 **CATION TO PARTICIPANTS.**

16           (a) EXCISE TAX ON FAILURE OF CERTAIN DEFINED  
17 CONTRIBUTION PLANS TO PROVIDE ADEQUATE INVEST-  
18 MENT INFORMATION.—

19           (1) IN GENERAL.—Section 4980I(e)(1)(A) of  
20 the Internal Revenue Code of 1986, as added by sec-  
21 tion 103, is amended by adding at the end the fol-  
22 lowing new flush sentence:

23           “In addition to the pension benefit statement,  
24 the administrator shall furnish at least once  
25 each year to each participant or beneficiary who

1           has the right to direct the investment of assets  
2           in his or her account the model form relating  
3           to basic investment guidelines as provided in  
4           paragraph (5).”

5           (2) BASIC INVESTMENT GUIDELINES.—Section  
6           4980I(e) of such Code, as so added, is amended by  
7           adding at the end the following new paragraph:

8           “(5) BASIC INVESTMENT GUIDELINES.—

9                   “(A) IN GENERAL.—The Secretary of  
10           Labor shall, in consultation with the Secretary,  
11           develop and make available to defined contribu-  
12           tion plans for distribution under paragraph  
13           (1)(A) a model form containing basic guidelines  
14           for investing for retirement. Except as other-  
15           wise provided by the Secretary of Labor, such  
16           guidelines shall include—

17                   “(i) information on the benefits of di-  
18           versification,

19                   “(ii) information on the essential dif-  
20           ferences, in terms of risk and return, of  
21           pension plan investments, including stocks,  
22           bonds, mutual funds, and money market  
23           investments,

24                   “(iii) information on how an individ-  
25           ual’s pension plan investment allocations

1           may differ depending on the individual's  
2           age and years to retirement and on other  
3           factors determined by the Secretary of  
4           Labor,

5           “(iv) sources of information where in-  
6           dividuals may learn more about pension  
7           rights, individual investing, and investment  
8           advice, and

9           “(v) such other information related to  
10          individual investing as the Secretary of  
11          Labor determines appropriate.

12          “(B) CALCULATION INFORMATION.—The  
13          model form under subparagraph (A) shall in-  
14          clude addresses for Internet sites, and a work-  
15          sheet, which a participant or beneficiary may  
16          use to calculate—

17               “(i) the retirement age value of the  
18               participant's or beneficiary's nonforfeitable  
19               pension benefits under the plan (expressed  
20               as an annuity amount and determined by  
21               reference to varied historical annual rates  
22               of return and annuity interest rates), and

23               “(ii) other important amounts relating  
24               to retirement savings, including the  
25               amount which a participant or beneficiary

1 would be required to save annually to pro-  
 2 vide a retirement income equal to various  
 3 percentages of their current salary (ad-  
 4 justed for expected growth prior to retire-  
 5 ment).

6 The Secretary of Labor shall develop an Inter-  
 7 net site which an individual may use in making  
 8 such calculations and the address for such site  
 9 shall be included with the form.

10 “(C) RULES RELATING TO FORM AND  
 11 STATEMENT.—The model form under subpara-  
 12 graph (A)—

13 “(i) shall be written in a manner cal-  
 14 culated to be understood by the average  
 15 plan participant, and

16 “(ii) may be delivered in written, elec-  
 17 tronic, or other appropriate form to the ex-  
 18 tent such form is reasonably accessible to  
 19 participants and beneficiaries.”

20 (3) CONFORMING AMENDMENTS.—Section  
 21 4980I of such Code is amended—

22 (A) by adding at the end of subsection  
 23 (c)(3) the following new subparagraph:

24 “(C) SEPARATE APPLICATION.—This para-  
 25 graph shall be applied separately to failures to

1 meet the requirements of subsection (e)(1)(A)  
2 to provide pension benefit statements and fail-  
3 ures to meet the requirements of subsection  
4 (e)(1)(A) to provide model forms containing  
5 basic investment guidelines.”;

6 (B) by inserting “or model form” after  
7 “statement” in subsection (d)(3); and

8 (C) by inserting “or model form containing  
9 basic investment guidelines” after “statement”  
10 in subsection (e)(4).

11 (b) ADEQUATE INVESTMENT EDUCATION.—

12 (1) IN GENERAL.—Section 104 of the Employee  
13 Retirement Income Security Act of 1974 (29 U.S.C.  
14 1024) is amended by redesignating subsection (d) as  
15 subsection (e) and by inserting after subsection (c)  
16 the following new subsection:

17 “(d) BASIC INVESTMENT GUIDELINES.—

18 “(1) IN GENERAL.—The administrator of an in-  
19 dividual account plan (other than a one-participant  
20 retirement plan described in section 101(i)(8)(B))  
21 shall furnish at least once each year to each partici-  
22 pant or beneficiary who has the right to direct the  
23 investment of assets in his or her account the model  
24 form relating to basic investment guidelines which is  
25 described in paragraph (2).

1 “(2) MODEL FORM.—

2 “(A) IN GENERAL.—The Secretary shall,  
3 in consultation with the Secretary of Treasury,  
4 develop and make available to individual ac-  
5 count plans for distribution under paragraph  
6 (1) a model form containing basic guidelines for  
7 investing for retirement. Except as otherwise  
8 provided by the Secretary, such guidelines shall  
9 include—

10 “(i) information on the benefits of di-  
11 versification,

12 “(ii) information on the essential dif-  
13 ferences, in terms of risk and return, of  
14 pension plan investments, including stocks,  
15 bonds, mutual funds, and money market  
16 investments,

17 “(iii) information on how an individ-  
18 ual’s pension plan investment allocations  
19 may differ depending on the individual’s  
20 age and years to retirement and on other  
21 factors determined by the Secretary,

22 “(iv) sources of information where in-  
23 dividuals may learn more about pension  
24 rights, individual investing, and investment  
25 advice, and

1           “(v) such other information related to  
2           individual investing as the Secretary deter-  
3           mines appropriate.

4           “(B) CALCULATION INFORMATION.—The  
5           model form under subparagraph (A) shall in-  
6           clude addresses for Internet sites, and a work-  
7           sheet, which a participant or beneficiary may  
8           use to calculate—

9           “(i) the retirement age value of the  
10          participant’s or beneficiary’s nonforfeitable  
11          pension benefits under the plan (expressed  
12          as an annuity amount and determined by  
13          reference to varied historical annual rates  
14          of return and annuity interest rates), and

15          “(ii) other important amounts relating  
16          to retirement savings, including the  
17          amount which a participant or beneficiary  
18          would be required to save annually to pro-  
19          vide a retirement income equal to various  
20          percentages of their current salary (ad-  
21          justed for expected growth prior to retire-  
22          ment).

23          The Secretary shall develop an Internet site  
24          which an individual may use in making such

1           calculations and the address for such site shall  
2           be included with the form.

3           “(C) PUBLIC COMMENT.—The Secretary of  
4           Labor shall provide at least 90 days for public  
5           comment before publishing final notice of the  
6           model form.

7           “(3) RULES RELATING TO FORM AND STATE-  
8           MENT.—The model form under paragraph (2)—

9           “(A) shall be written in a manner cal-  
10          culated to be understood by the average plan  
11          participant, and

12          “(B) may be delivered in written, elec-  
13          tronic, or other appropriate form to the extent  
14          such form is reasonably accessible to partici-  
15          pants and beneficiaries.”

16          (2) ENFORCEMENT.—Section 502(e)(7) of such  
17          Act (29 U.S.C. 1132(e)(7)), as amended by section  
18          102, is amended by striking “section 101” and in-  
19          serting “section 101 or section 104(d)”.

20          (c) EFFECTIVE DATE.—

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

24          (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
25          GAINED AGREEMENTS.—In the case of a plan main-

1 tained pursuant to 1 or more collective bargaining  
 2 agreements between employee representatives and 1  
 3 or more employers ratified on or before the date of  
 4 the enactment of this Act, paragraph (1) shall be  
 5 applied to benefits pursuant to, and individuals cov-  
 6 ered by, any such agreement by substituting for  
 7 “December 31, 2006” the earlier of—

8 (A) the later of—

9 (i) December 31, 2007, or

10 (ii) the date on which the last of such  
 11 collective bargaining agreements termi-  
 12 nates (determined without regard to any  
 13 extension thereof after such date of enact-  
 14 ment), or

15 (B) December 31, 2008.

16 **SEC. 202. MATERIAL INFORMATION RELATING TO INVEST-**  
 17 **MENT IN EMPLOYER SECURITIES.**

18 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

19 (1) IN GENERAL.—Section 4980H(e) of the In-  
 20 ternal Revenue Code of 1986, as added by section  
 21 102, is amended—

22 (A) by striking “(e) NOTICE OF RIGHT TO  
 23 DIVEST.—Not” and inserting:

24 “(e) NOTICE REQUIREMENTS.—

25 “(1) NOTICE OF RIGHT TO DIVEST.—Not”,

1 (B) by redesignating paragraphs (1) and  
2 (2) as subparagraphs (A) and (B) and adjust-  
3 ing all margins accordingly, and

4 (C) by adding at the end the following new  
5 paragraph:

6 “(2) MATERIAL INFORMATION.—

7 “(A) IN GENERAL.—The administrator of  
8 a defined contribution plan (other than a one-  
9 participant retirement plan) shall provide to  
10 each participant and beneficiary who has the  
11 right to direct the investment of assets in his or  
12 her account in employer securities with all re-  
13 ports, proxy statements, and other communica-  
14 tions regarding investment of such assets in  
15 employer securities to the extent that such re-  
16 ports, statements, and communications are re-  
17 quired to be provided by the plan sponsor to in-  
18 vestors in connection with such an investment  
19 under applicable securities laws. Such reports,  
20 statements, and communications may be deliv-  
21 ered in written, electronic, or other appropriate  
22 form to the extent such form is reasonably ac-  
23 cessible to participants and beneficiaries.

24 “(B) PLAN SPONSOR.—If any information  
25 required to be provided under paragraph (1) is

1 maintained by the plan sponsor, the plan spon-  
2 sor shall transmit such information to the plan  
3 administrator.”

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 4980H(c)(3) of such Code, as  
6 so added, is amended by adding at the end the  
7 following new subparagraph:

8 “(C) SEPARATE APPLICATION.—This para-  
9 graph shall be applied separately for failures to  
10 meet the requirements of subsection (e)(1) and  
11 failures to meet the requirements of subsection  
12 (e)(2).”

13 (B)(i) The heading for section 4980H of  
14 such Code, as so added, is amended by striking  
15 **“NOTICE OF FREEDOM TO DIVEST EM-**  
16 **PLOYER SECURITIES”** and inserting **“INFOR-**  
17 **MATION REGARDING INVESTMENT IN EM-**  
18 **PLOYER SECURITIES”**.

19 (ii) The item relating to section 4980H in  
20 the table of sections for chapter 43 of such  
21 Code, as so added, is amended by striking “no-  
22 tice of freedom to divest employer securities”  
23 and inserting “information regarding invest-  
24 ment in employer securities”.

25 (b) AMENDMENTS OF ERISA.—

1           (1) IN GENERAL.—Section 101 of the Employee  
2 Retirement Income Security Act of 1974 (29 U.S.C.  
3 1021), as amended by this Act, is amended by redesi-  
4 gnating subsection (k) as subsection (l) and by in-  
5 serting after subsection (j) the following new sub-  
6 section:

7           “(k) PROVIDING OF MATERIAL INFORMATION.—

8           “(1) IN GENERAL.—The administrator of an in-  
9 dividual account plan (other than a one-participant  
10 retirement plan described in section 101(i)(8)(B))  
11 shall provide to each participant and beneficiary who  
12 has the right to direct the investment of assets in  
13 his or her account in employer securities with all re-  
14 ports, proxy statements, and other communications  
15 regarding investment of such assets in employer se-  
16 curities to the extent that such reports, statements,  
17 and communications are required to be provided by  
18 the plan sponsor to investors in connection with such  
19 an investment under applicable securities laws. Such  
20 reports, statements, and communications may be de-  
21 livered in written, electronic, or other appropriate  
22 form to the extent such form is reasonably accessible  
23 to participants and beneficiaries.

24           “(2) PLAN SPONSOR.—If any information re-  
25 quired to be provided under paragraph (1) is main-

1       tained by the plan sponsor, the plan sponsor shall  
2       transmit such information to the plan adminis-  
3       trator.”

4               (2) ENFORCEMENT.—Section 502 of such Act  
5       (29 U.S.C. 1132) is amended—

6               (A) in subsection (a)(6), by striking “(6),  
7       or (7)” and inserting “(6), (7), or (8)”;

8               (B) by redesignating paragraph (8) of sub-  
9       section (c) as paragraph (9); and

10              (C) by inserting after paragraph (7) of  
11       subsection (c) the following new paragraph:

12       “(8) The Secretary may assess a civil penalty against  
13       any person of up to \$1,000 a day from the date of the  
14       person’s failure or refusal to comply with the requirements  
15       of section 101(k) until such failure or refusal is cor-  
16       rected.”

17              (c) EFFECTIVE DATE.—

18              (1) IN GENERAL.—The amendments made by  
19       this section shall apply to plan years beginning after  
20       December 31, 2005.

21              (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
22       GAINED AGREEMENTS.—In the case of a plan main-  
23       tained pursuant to 1 or more collective bargaining  
24       agreements between employee representatives and 1  
25       or more employers ratified on or before the date of

1 the enactment of this Act, paragraph (1) shall be  
 2 applied to benefits pursuant to, and individuals cov-  
 3 ered by, any such agreement by substituting for  
 4 “December 31, 2005” the earlier of—

5 (A) the later of—

6 (i) December 31, 2006, or

7 (ii) the date on which the last of such  
 8 collective bargaining agreements termi-  
 9 nates (determined without regard to any  
 10 extension thereof after such date of enact-  
 11 ment), or

12 (B) December 31, 2007.

13 **SEC. 203. INDEPENDENT INVESTMENT ADVICE PROVIDED**  
 14 **TO PLAN PARTICIPANTS.**

15 (a) IN GENERAL.—Section 404 of the Employee Re-  
 16 tirement Income Security Act of 1974 (29 U.S.C. 1104)  
 17 is amended by adding at the end the following new sub-  
 18 section:

19 “(e) INDEPENDENT INVESTMENT ADVISER.—

20 “(1) IN GENERAL.—In the case of an individual  
 21 account plan which permits a plan participant or  
 22 beneficiary to direct the investment of the assets in  
 23 his or her account, if a plan sponsor or other person  
 24 who is a fiduciary designates and monitors a quali-

1       fied investment adviser pursuant to the requirements  
2       of paragraph (3), such fiduciary—

3               “(A) shall be deemed to have satisfied the  
4               requirements under this section for the prudent  
5               designation and periodic review of an invest-  
6               ment adviser with whom the plan sponsor or  
7               other person who is a fiduciary enters into an  
8               arrangement for the provision of advice referred  
9               to in section 3(21)(A)(ii),

10              “(B) shall not be liable under this section  
11              for any loss, or by reason of any breach, with  
12              respect to the provision of investment advice  
13              given by such adviser to any plan participant or  
14              beneficiary, and

15              “(C) shall not be liable for any co-fiduciary  
16              liability under subsections (a)(2) and (b) of sec-  
17              tion 405 with respect to the provision of invest-  
18              ment advice given by such adviser to any plan  
19              participant or beneficiary.

20       “(2) QUALIFIED INVESTMENT ADVISER.—

21              “(A) IN GENERAL.—For purposes of this  
22              subsection, the term ‘qualified investment ad-  
23              viser’ means, with respect to a plan, a person—

24                      “(i) who is a fiduciary of the plan by  
25                      reason of the provision of investment ad-

1 vice by such person to a plan participant  
2 or beneficiary;

3 “(ii) who—

4 “(I) is registered as an invest-  
5 ment adviser under the Investment  
6 Advisers Act of 1940 (15 U.S.C. 80b-  
7 1 et seq.),

8 “(II) is registered as an invest-  
9 ment adviser under the laws of the  
10 State in which such adviser maintains  
11 the principal office and place of busi-  
12 ness of such adviser, but only if such  
13 State laws are consistent with section  
14 203A of the Investment Advisers Act  
15 of 1940 (15 U.S.C. 80b-3a),

16 “(III) is a bank or similar finan-  
17 cial institution referred to in section  
18 408(b)(4),

19 “(IV) is an insurance company  
20 qualified to do business under the  
21 laws of a State, or

22 “(V) is any other comparably  
23 qualified entity which satisfies such  
24 criteria as the Secretary determines

1 appropriate, consistent with the pur-  
2 poses of this subsection, and

3 “(iii) who meets the requirements of  
4 subparagraph (B).

5 “(B) ADVISER REQUIREMENTS.—The re-  
6 quirements of this subparagraph are met if  
7 every individual employed (or otherwise com-  
8 pensated) by a person described in subpara-  
9 graph (A)(ii) who provides investment advice on  
10 behalf of such person to any plan participant or  
11 beneficiary is—

12 “(i) an individual described in sub-  
13 clause (I) of subparagraph (A)(ii),

14 “(ii) an individual described in sub-  
15 clause (II) of subparagraph (A)(ii), but  
16 only if such State has an examination re-  
17 quirement to qualify for registration,

18 “(iii) registered as a broker or dealer  
19 under the Securities Exchange Act of 1934  
20 (15 U.S.C. 78a et seq.),

21 “(iv) a registered representative as de-  
22 scribed in section 3(a)(18) of the Securi-  
23 ties Exchange Act of 1934 (15 U.S.C.  
24 78c(a)(18)) or section 202(a)(17) of the

1 Investment Advisers Act of 1940 (15  
2 U.S.C. 80b-2(a)(17)), or

3 “(v) any other comparably qualified  
4 individual who satisfies such criteria as the  
5 Secretary determines appropriate, con-  
6 sistent with the purposes of this sub-  
7 section.

8 “(3) VERIFICATION REQUIREMENTS.—The re-  
9 quirements of this paragraph are met if—

10 “(A) the plan sponsor or other person who  
11 is a fiduciary in designating a qualified invest-  
12 ment adviser receives at the time of the des-  
13 ignation, and annually thereafter, a written  
14 verification from the qualified investment ad-  
15 viser that the investment adviser—

16 “(i) is and remains a qualified invest-  
17 ment adviser,

18 “(ii) acknowledges that the investment  
19 adviser is a fiduciary with respect to the  
20 plan and is solely responsible for its invest-  
21 ment advice,

22 “(iii) has reviewed the plan documents  
23 (including investment options) and has de-  
24 termined that its relationship with the plan  
25 and the investment advice provided to any

1 plan participant or beneficiary, including  
2 any fees or other compensation it will re-  
3 ceive, will not constitute a violation of sec-  
4 tion 406,

5 “(iv) will, in providing investment ad-  
6 vice to any participant or beneficiary, con-  
7 sider any employer securities or employer  
8 real property allocated to his or her ac-  
9 count, and

10 “(v) has the necessary insurance cov-  
11 erage (as determined by the Secretary) for  
12 any claim by any plan participant or bene-  
13 ficiary,

14 “(B) the plan sponsor or other person who  
15 is a fiduciary in designating a qualified invest-  
16 ment adviser reviews the documents described  
17 in paragraph (4) provided by such adviser and  
18 determines that there is no material reason not  
19 to enter into an arrangement for the provision  
20 of advice by such qualified investment adviser,  
21 and

22 “(C) the plan sponsor or other person who  
23 is a fiduciary in designating a qualified invest-  
24 ment adviser, within 30 days of having informa-  
25 tion brought to its attention that the invest-

1           ment adviser is no longer qualified or that a  
2           substantial number of plan participants or  
3           beneficiaries have raised concerns about the  
4           services being provided by the investment ad-  
5           viser—

6                   “(i) investigates such information and  
7                   concerns, and

8                   “(ii) determines that there is no mate-  
9                   rial reason not to continue the designation  
10                  of the adviser as a qualified investment ad-  
11                  viser.

12           “(4) DOCUMENTATION.—A qualified investment  
13           adviser shall provide the following documents to the  
14           plan sponsor or other person who is a fiduciary in  
15           designating the adviser:

16                   “(A) The contract with the plan sponsor or  
17                   other person who is a fiduciary for the services  
18                   to be provided by the investment adviser to the  
19                   plan participants and beneficiaries.

20                   “(B) A disclosure as to any fees or other  
21                   compensation that will be received by the in-  
22                   vestment adviser for the provision of such in-  
23                   vestment advice and as to any fees and other  
24                   compensation that will be received as a result of  
25                   a participant’s investment election.



1           “(A) IN GENERAL.—No amount shall be  
2 included in the gross income of any employee  
3 solely because the employee may choose between  
4 any qualified retirement planning services pro-  
5 vided by an eligible investment advisor and  
6 compensation which would otherwise be includ-  
7 ible in the gross income of such employee. The  
8 preceding sentence shall apply to highly com-  
9 pensated employees only if the choice described  
10 in such sentence is available on substantially  
11 the same terms to each member of the group of  
12 employees normally provided education and in-  
13 formation regarding the employer’s qualified  
14 employer plan.

15           “(B) LIMITATION.—The maximum amount  
16 which may be excluded under subparagraph (A)  
17 with respect to any employee for any taxable  
18 year shall not exceed \$1,000.

19           “(C) ELIGIBLE INVESTMENT ADVISER.—  
20 For purposes of this paragraph, the term ‘eligi-  
21 ble investment adviser’ means, with respect to  
22 a plan, a person—

23                   “(i) who—

24                           “(I) is registered as an invest-  
25                           ment adviser under the Investment

1           Advisers Act of 1940 (15 U.S.C. 80b–  
2           1 et seq.),

3           “(II) is registered as an invest-  
4           ment adviser under the laws of the  
5           State in which such adviser maintains  
6           the principal office and place of busi-  
7           ness of such adviser, but only if such  
8           State laws are consistent with section  
9           203A of the Investment Advisers Act  
10          of 1940 (15 U.S.C. 80b–3a),

11          “(III) is a bank or similar finan-  
12          cial institution referred to in section  
13          408(b)(4),

14          “(IV) is an insurance company  
15          qualified to do business under the  
16          laws of a State, or

17          “(V) is any other comparably  
18          qualified entity which satisfies such  
19          criteria as the Secretary determines  
20          appropriate, consistent with the pur-  
21          poses of this subsection, and

22          “(ii) who meets the requirements of  
23          subparagraph (D).

24          “(D) ADVISER REQUIREMENTS.—The re-  
25          quirements of this subparagraph are met if

1 every individual employed (or otherwise com-  
2 pensated) by a person described in subpara-  
3 graph (C)(i) who provides investment advice on  
4 behalf of such person to any plan participant or  
5 beneficiary is—

6 “(i) an individual described in sub-  
7 clause (I) of subparagraph (C)(i),

8 “(ii) an individual described in sub-  
9 clause (II) of subparagraph (C)(i), but  
10 only if such State has an examination re-  
11 quirement to qualify for registration,

12 “(iii) registered as a broker or dealer  
13 under the Securities Exchange Act of 1934  
14 (15 U.S.C. 78a et seq.),

15 “(iv) a registered representative as de-  
16 scribed in section 3(a)(18) of the Securi-  
17 ties Exchange Act of 1934 (15 U.S.C.  
18 78c(a)(18)) or section 202(a)(17) of the  
19 Investment Advisers Act of 1940 (15  
20 U.S.C. 80b-2(a)(17)), or

21 “(v) any other comparably qualified  
22 individual who satisfies such criteria as the  
23 Secretary determines appropriate, con-  
24 sistent with the purposes of this para-  
25 graph.

1           “(E) TERMINATION.—This paragraph  
2           shall not apply to taxable years beginning after  
3           December 31, 2010.”

4           (b) CONFORMING AMENDMENTS.—

5           (1) Section 403(b)(3)(B) of such Code is  
6           amended by inserting “132(m)(4),” after  
7           “132(f)(4),”.

8           (2) Section 414(s)(2) of such Code is amended  
9           by inserting “132(m)(4),” after “132(f)(4),”.

10          (3) Section 415(c)(3)(D)(ii) of such Code is  
11          amended by inserting “132(m)(4),” after  
12          “132(f)(4),”.

13          (c) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to taxable years beginning after  
15          December 31, 2005.

16          **SEC. 205. ADMINISTRATIVE PROVISIONS.**

17          (a) AUTHORITY OF THE SECRETARY OF THE TREAS-  
18          URY.—The Secretary of the Treasury shall have the au-  
19          thority to prescribe rules applicable to the statements re-  
20          quired under section 4980H(e)(1) of the Internal Revenue  
21          Code of 1986 (as added and amended by this Act) and  
22          section 101(j) of the Employee Retirement Income Secu-  
23          rity Act of 1974 (as added by this Act).

1 (b) AUTHORITY OF THE SECRETARY OF LABOR.—

2 The Secretary of Labor shall have the authority to pre-

3 scribe rules applicable to the statements required under—

4 (1) section 4980H(e)(2) of the Internal Rev-

5 enue Code of 1986 (as added by this Act) and sec-

6 tion 101(k) of this Employee Retirement Income Se-

7 curity Act of 1974 (as added by this Act);

8 (2) section 4980I of such Code (as added by

9 this Act) and section 105(a) of such Act (as added

10 by this Act); and

11 (3) section 4980J of such Code (as added by

12 this Act) and section 101(i) such Act (as amended

13 by this Act).

1 **TITLE III—IMPROVEMENTS IN**  
 2 **FUNDING RULES FOR SINGLE-**  
 3 **EMPLOYER PENSION PLANS**

4 **Subtitle A—Rules Relating to**  
 5 **Funding, Benefit Limitations,**  
 6 **and Deductions**

7 **PART I—AMENDMENTS TO THE INTERNAL**  
 8 **REVENUE CODE OF 1986**

9 **SEC. 301. MODIFICATIONS OF THE MINIMUM FUNDING**  
 10 **STANDARDS.**

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

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

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

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

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

24 **“(A) in the case of a defined benefit plan**  
 25 **which is a single-employer 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 pen-  
7 sion plan which is a single-employer plan, the  
8 employer makes contributions to or under the  
9 plan for the plan year which are required under  
10 the plan, and

11 “(C) in the case of a multiemployer plan,  
12 the employers make contributions to or under  
13 the plan for the 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) PLANS TO WHICH SECTION APPLIES.—

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

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

4           “(B) the plan satisfied (or was determined  
5           by the Secretary to have satisfied) the require-  
6           ments of section 403(a).

7           “(2) EXCEPTIONS.—This section shall not  
8           apply to—

9           “(A) any profit-sharing or stock bonus  
10          plan,

11          “(B) any insurance contract plan described  
12          in subsection (g)(3),

13          “(C) any governmental plan (within the  
14          meaning of section 414(d)),

15          “(D) any church plan (within the meaning  
16          of section 414(e)) with respect to which the  
17          election provided by section 410(d) has not been  
18          made,

19          “(E) any plan which has not, at any time  
20          after September 2, 1974, provided for employer  
21          contributions, or

22          “(F) any plan established and maintained  
23          by a society, order, or association described in  
24          section 501(c) (8) or (9), if no part of the con-

1           tributions to or under such plan are made by  
2           employers of participants in such plan.

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

8           “(3) CERTAIN TERMINATED MULTIEMPLOYER  
9           PLANS.—This section applies with respect to a ter-  
10          minated multiemployer plan to which section 4021  
11          of the Employee Retirement Income Security Act of  
12          1974 applies until the last day of the plan year in  
13          which the plan terminates (within the meaning of  
14          section 4041A(a)(2) of such Act).

15          “(c) LIABILITY FOR CONTRIBUTIONS.—

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

22                 “(2) JOINT AND SEVERAL LIABILITY WHERE  
23                 EMPLOYER MEMBER OF CONTROLLED GROUP.—If  
24                 the employer referred to in paragraph (1) is a mem-  
25                 ber of a controlled group, each member of such

1 group shall be jointly and severally liable for pay-  
2 ment of such contribution or required installment.

3 “(d) VARIANCE FROM MINIMUM FUNDING STAND-  
4 ARD.—

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

7 “(A) IN GENERAL.—If—

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

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

20 the Secretary may, subject to subparagraphs  
21 (B) and (C), waive the requirements of sub-  
22 section (a) for such year with respect to all or  
23 any portion of the minimum funding standard.

24 The Secretary shall not waive the minimum  
25 funding standard with respect to a plan for

1 more than 3 of any 15 (5 of any 15 in the case  
2 of a multiemployer plan) consecutive plan years.

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

6 “(i) a single-employer plan, the min-  
7 imum required contribution under section  
8 430 for the plan year shall be reduced by  
9 the amount of the waived funding defi-  
10 ciency and such amount shall be amortized  
11 as required under section 430(d), and

12 “(ii) a multiemployer plan, the fund-  
13 ing standard account shall be credited  
14 under section 431(b)(3)(C) with the  
15 amount of the waived funding deficiency  
16 and such amount shall be amortized as re-  
17 quired under section 431(b)(2)(C), except  
18 that the interest rate used for purposes of  
19 computing the amortization charge de-  
20 scribed in such section shall be the rate de-  
21 termined under section 6621(b).

22 “(C) WAIVER OF AMORTIZED PORTION  
23 NOT ALLOWED.—The Secretary may not waive  
24 under subparagraph (A) any portion of the  
25 minimum funding standard under subsection

1 (a) for a plan year which is attributable to any  
2 amortization payment required to be made for  
3 such plan year with respect to any amortization  
4 described in subparagraph (B) of any waived  
5 funding deficiency for any preceding plan year.

6 “(2) DETERMINATION OF BUSINESS HARD-  
7 SHIP.—For purposes of this section, 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 not—

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

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

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

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

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

1 regard to the waiver) for a plan year waived by the  
2 Secretary under this subsection and not satisfied by  
3 employer contributions.

4 “(4) APPLICATION MUST BE SUBMITTED BE-  
5 FORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—

6 In the case of a single-employer plan, no waiver may  
7 be granted under this subsection with respect to any  
8 plan for any plan year unless an application therefor  
9 is submitted to the Secretary not later than the 15th  
10 day of the 3rd month beginning after the close of  
11 such plan year.

12 “(5) SPECIAL RULE IF EMPLOYER IS MEMBER  
13 OF CONTROLLED GROUP.—In the case of a single-  
14 employer plan, if an employer is a member of a con-  
15 trolled group, the temporary substantial business  
16 hardship requirements of paragraph (1) shall be  
17 treated as met only if such requirements are met—

18 “(A) with respect to such employer, and

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

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

1        ysis is not necessary because the taking into account  
2        of such member would not significantly affect the  
3        determination under this subsection.

4        “(e) EXTENSION OF AMORTIZATION PERIODS.—In  
5        the case of a multiemployer plan, the period of years re-  
6        quired to amortize any unfunded liability (described in any  
7        clause of section 431(b)(2)(B)) of the plan may be ex-  
8        tended by the Secretary for a period of time (not in excess  
9        of 10 years) if the Secretary determines that such exten-  
10       sion would carry out the purposes of the Employee Retire-  
11       ment Income Security Act of 1974 and would provide ade-  
12       quate protection for participants under the plan and their  
13       beneficiaries and if the Secretary determines that the fail-  
14       ure to permit such extension would—

15                “(1) result in—

16                        “(A) a substantial risk to the voluntary  
17                        continuation of the plan, or

18                        “(B) a substantial curtailment of pension  
19                        benefit levels or employee compensation, and

20                “(2) be adverse to the interests of plan partici-  
21        pants in the aggregate.

22        The interest rate applicable for any plan year under any  
23        arrangement entered into by the Secretary in connection  
24        with an extension granted under this subsection shall be  
25        the rate determined under section 6621(b).

1       “(f) REQUIREMENTS RELATING TO WAIVERS AND  
2 EXTENSIONS.—

3               “(1) BENEFITS MAY NOT BE INCREASED DUR-  
4       ING WAIVER OR EXTENSION PERIOD.—If—

5                       “(A) a waiver under subsection (d)(1) or  
6       an extension of time under subsection (e) is in  
7       effect with respect to the plan, or

8                       “(B) a plan amendment described in sub-  
9       section (g)(2) which reduces the accrued benefit  
10       of any participant has been made at any time  
11       in the preceding 12 months (24 months for  
12       multiemployer plans),

13       no applicable benefit increase shall take effect. If an  
14       applicable benefit increase takes effect in violation of  
15       the preceding sentence, any such waiver or extension  
16       of time shall not apply to any plan year ending on  
17       or after the date on which such increase takes effect.

18               “(2) EXCEPTION.—Paragraph (1) shall not  
19       apply to any applicable benefit increase pursuant to  
20       a plan amendment which—

21                       “(A) the Secretary determines to be rea-  
22       sonable and which provides for only de minimis  
23       increases in the liabilities of the plan,

1           “(B) only repeals an amendment described  
2           in subsection (g)(2) which reduced the accrued  
3           benefit of any participant, or

4           “(C) is required as a condition of qualifica-  
5           tion under this part.

6           “(3) APPLICABLE BENEFIT INCREASE.—The  
7           term ‘applicable benefit increase’ has the meaning  
8           given such term by section 436(b)(3) without regard  
9           to subparagraph (B) or (C) thereof.

10          “(4) SECURITY FOR WAIVERS; CONSULTA-  
11          TIONS.—

12           “(A) SECURITY MAY BE REQUIRED.—

13           “(i) IN GENERAL.—Except as pro-  
14           vided in subparagraph (C), the Secretary  
15           may require an employer maintaining a de-  
16           fined benefit plan which is a single-em-  
17           ployer plan to provide security to such plan  
18           as a condition for granting or modifying a  
19           waiver under subsection (d).

20           “(ii) SPECIAL RULES.—Any security  
21           provided under clause (i) may be perfected  
22           and enforced only by—

23                   “(I) the Pension Benefit Guar-  
24                   anty Corporation, or

1           “(II) at the direction of the Cor-  
2           poration, by a contributing sponsor  
3           (within the meaning of section  
4           4001(a)(13) of the Employee Retirement  
5           Income Security Act of 1974) or  
6           a member of such sponsor’s controlled  
7           group (within the meaning of section  
8           4001(a)(14) of such Act).

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

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

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

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

23                         “(ii) consider—

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

1           “(II) any views of any employee  
2           organization (within the meaning of  
3           section 3(4) of the Employee Retirement  
4           Income Security Act of 1974)  
5           representing participants in the plan  
6           which are submitted in writing to the  
7           Secretary in connection with such ap-  
8           plication.

9           Information provided to the Corporation  
10          under this subparagraph shall be consid-  
11          ered tax return information and subject to  
12          the safeguarding and reporting require-  
13          ments of section 6103(p).

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

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

20                       “(I) the aggregate unpaid min-  
21                       imum required contributions (within  
22                       the meaning of section 4971) for the  
23                       plan year and all preceding plan  
24                       years, and

1                   “(II) the present value of all  
2                   waiver amortization payments under  
3                   section 430(d) determined for the  
4                   plan year and all succeeding plan  
5                   years,

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

7                   “(ii) TREATMENT OF PENDING WAIV-  
8                   ERS.—For purposes of clause (i)(I), min-  
9                   imum required contributions shall include  
10                  any increase in such amount which would  
11                  result if all applications for waivers of the  
12                  minimum funding standard under sub-  
13                  section (d) or section 302(c) of the Em-  
14                  ployee Retirement Income Security Act of  
15                  1974 which are pending with respect to  
16                  such plan were denied.

17                  “(5) ADDITIONAL REQUIREMENTS.—

18                  “(A) ADVANCE NOTICE.—The Secretary  
19                  shall, before granting a waiver under subsection  
20                  (d) or an extension under subsection (e), re-  
21                  quire each applicant to provide evidence satis-  
22                  factory to the Secretary that the applicant has  
23                  provided notice of the filing of the application  
24                  for such waiver or extension to each affected  
25                  party. Such notice shall include a description of

1 the extent to which the plan is funded for bene-  
2 fits which are guaranteed under title IV of the  
3 Employee Retirement Income Security Act of  
4 1974 and for benefit liabilities (within the  
5 meaning of section 4041(d) of such Act).

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

11 “(g) OTHER DEFINITIONS AND RULES.—For pur-  
12 poses of this section—

13 “(1) CHANGE IN METHOD OR YEAR.—If the  
14 funding method or a plan year for a plan is changed,  
15 the change shall take effect only if approved by the  
16 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 (d)(2)) and that a  
23          waiver under subsection (d)(1) is unavailable or in-  
24          adequate.

1           “(3) CERTAIN INSURANCE CONTRACT PLANS.—

2           A plan is described in this paragraph if—

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

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

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

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



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

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

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

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

5 “(a) MINIMUM REQUIRED CONTRIBUTION.—

6 “(1) IN GENERAL.—The minimum required  
 7 contribution for a defined benefit plan to which sec-  
 8 tion 412(a)(2)(A) applies for any plan year shall, for  
 9 purposes of this section and section 412, be equal to  
 10 the sum of—

11 “(A) the target normal cost for the plan  
 12 year,

13 “(B) the aggregate amortization payment  
 14 (if any) for the plan year, and

15 “(C) the waiver amortization payment (if  
 16 any) for the plan year.

17 In no event shall the sum of the amounts deter-  
 18 mined under subparagraphs (B) and (C) for any  
 19 plan year exceed the unfunded target liability for the  
 20 plan year.

21 “(2) LIMITATION ON ANNUAL INCREASES OR  
 22 DECREASES.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), the minimum required con-  
3           tribution for any plan year beginning after  
4           2007—

5                   “(i) shall not exceed the minimum re-  
6                   quired contribution for the preceding plan  
7                   year (determined after application of this  
8                   paragraph and without regard to any ad-  
9                   justment under subsection (i)(2)), in-  
10                  creased by the greater of—

11                           “(I) 30 percent of the target nor-  
12                           mal cost of the plan for the preceding  
13                           plan year, or

14                           “(II) 2 percent of the target li-  
15                           ability of the plan for the preceding  
16                           plan year, and

17                   “(ii) shall not be less than such min-  
18                   imum required contribution for the pre-  
19                   ceding plan year, reduced by the greater of  
20                   the amounts under subclause (I) or (II) of  
21                   clause (i).

22           “(B) SPECIAL RULES FOR BENEFIT IN-  
23           CREASES OR DECREASES DURING PLAN YEAR.—  
24           If an applicable benefit increase (as defined in  
25           section 436(b)(3) without regard to subpara-

1 graph (B) or (C) thereof) takes effect during  
2 the current plan year—

3 “(i) the minimum required contribu-  
4 tion for the current plan year for purposes  
5 of applying subparagraph (A) shall be de-  
6 termined without regard to any increase in  
7 such contribution attributable to the appli-  
8 cable benefit increase, and

9 “(ii) the amount determined under  
10 subparagraph (A) (after application of  
11 clause (i)) shall be increased by the  
12 amount of the increase in the minimum re-  
13 quired contribution disregarded under  
14 clause (i).

15 A similar rule shall apply in the case of any  
16 benefit decrease which takes effect during the  
17 current plan year.

18 “(C) SPECIAL RULES RELATING TO PRE-  
19 CEDING YEAR.—For purposes of subparagraph  
20 (A)—

21 “(i) all target liability amortization in-  
22 stallments and waiver amortization install-  
23 ments under subsections (c) and (d) which  
24 were determined with respect to any amor-  
25 tizable target liability or waived funding

1           deficiency which is fully amortized as of  
2           the close of the preceding plan year shall  
3           not be taken into account in determining  
4           the minimum required contribution for the  
5           preceding plan year, and

6           “(ii) if paragraph (3) applied for the  
7           preceding plan year, the minimum required  
8           contribution for the preceding plan year  
9           shall be treated as being equal to the tar-  
10          get normal cost for such year.

11          “(3) SPECIAL RULES FOR PLANS WHERE AS-  
12          SETS EXCEED TARGET LIABILITY.—If, as of the  
13          valuation date for any plan year, the value of the as-  
14          sets of the plan (reduced as provided in subsection  
15          (e)(3)) equals or exceeds the target liability for the  
16          plan year (in this subsection referred to as the ‘cur-  
17          rent plan year’)—

18                 “(A) the minimum required contribution  
19                 for the current plan year shall be equal to tar-  
20                 get normal cost, reduced (but not below zero)  
21                 by the amount of any such excess, and

22                 “(B) all target liability amortization in-  
23                 stallments and waiver amortization installments  
24                 under subsections (c) and (d) which were deter-  
25                 mined with respect to any amortizable target li-

1 ability or waived funding deficiency for the cur-  
2 rent plan year or any preceding plan year shall  
3 not be taken into account for any succeeding  
4 plan year.

5 “(b) TARGET NORMAL COST.—For purposes of this  
6 section—

7 “(1) IN GENERAL.—The term ‘target normal  
8 cost’ means, with respect to any plan year, the  
9 present value of all benefits which accrue or are  
10 earned under the plan during the plan year. If any  
11 benefit attributable to services performed in a pre-  
12 ceding plan year is increased by reason of any in-  
13 crease in compensation during the current plan year,  
14 the increase shall be treated as accruing during the  
15 current plan year.

16 “(2) FINANCIALLY-WEAK EMPLOYERS.—If a  
17 plan sponsor of a plan for any plan year is a finan-  
18 cially-weak employer for any plan year, the target  
19 normal cost of the plan for the plan year shall be  
20 the at-risk target normal cost determined under sub-  
21 section (f).

22 “(c) DEFINITIONS AND RULES RELATING TO TAR-  
23 GET LIABILITY.—For purposes of this section—

24 “(1) TARGET LIABILITY.—

1           “(A) IN GENERAL.—The term ‘target li-  
2           ability’ means, with respect to any plan year,  
3           the present value of all benefits accrued or  
4           earned under the plan as of the beginning of  
5           the plan year.

6           “(B) FINANCIALLY-WEAK EMPLOYERS.—If  
7           a plan sponsor of a plan for any plan year is  
8           a financially-weak employer for any plan year,  
9           the target liability of the plan for the plan year  
10          shall be the at-risk target liability determined  
11          under subsection (f).

12          “(2) UNFUNDED TARGET LIABILITY.—The  
13          term ‘unfunded target liability’ means, with respect  
14          to any plan year, the excess (if any) of—

15                 “(A) the target liability for the plan year,  
16                 over

17                 “(B) the value of the assets of the plan  
18                 (reduced as provided under subsection (e)(3))  
19                 as of the valuation date.

20          “(3) AGGREGATE AMORTIZATION PAYMENTS.—  
21          For purposes of this section—

22                 “(A) AGGREGATE AMORTIZATION PAY-  
23                 MENT.—The aggregate amortization payment  
24                 for any plan year is the aggregate amount of  
25                 the target liability amortization installments de-

1           terminated for the plan year with respect to any  
2           amortizable target liability for the plan year  
3           and each of the 6 preceding plan years.

4           “(B) AMORTIZABLE TARGET LIABILITY.—

5                   “(i) IN GENERAL.—The term ‘amor-  
6           tizable target liability’ means, with respect  
7           to any plan year, the amount (if any) by  
8           which the unfunded target liability for the  
9           current plan year is more or less than the  
10          amount determined under clause (ii).

11                   “(ii) AMOUNTS PREVIOUSLY AC-  
12          COUNTED FOR.—The amount determined  
13          under this clause is the present value of all  
14          target liability amortization installments  
15          and waiver amortization installments under  
16          this subsection and subsection (d) which  
17          were determined for the current plan year  
18          or any succeeding plan year with respect to  
19          any amortizable target liability or waived  
20          funding deficiency for any plan year pre-  
21          ceding the current plan year.

22           “(C) TARGET LIABILITY AMORTIZATION  
23          INSTALLMENTS.—If a plan has an amortizable  
24          target liability for any plan year—

1           “(i) the liability shall be amortized in  
2           7 level amortization amounts over the 7-  
3           plan year period beginning with the plan  
4           year, and

5           “(ii) the target liability amortization  
6           installment with respect to the liability for  
7           each of the 7 plan years shall be the fixed  
8           amount necessary to amortize the liability  
9           as provided under clause (i).

10          “(D) COMPUTATION ASSUMPTIONS.—In  
11          determining the present value of any amortiza-  
12          tion installment under subparagraph (B)(ii), or  
13          the amount of any amortization installment  
14          under subparagraph (C), the following rules  
15          shall apply:

16               “(i) Each amortization installment  
17               shall be treated as made on the valuation  
18               date for the plan year for which the install-  
19               ment is determined.

20               “(ii) The interest rates used shall be  
21               the interest rates determined under the  
22               yield curve method under subsection  
23               (h)(2)(B) for the current plan year.

24          “(4) TRANSITION RULE FOR AMORTIZATION OF  
25          UNFUNDED TARGET LIABILITY.—

1           “(A) IN GENERAL.—Solely for purposes of  
 2           applying paragraph (3) in the case of plan  
 3           years beginning after 2006 and before 2011,  
 4           only the applicable percentage of target liability  
 5           shall be taken into account under paragraph  
 6           (2)(A) in determining unfunded target liability  
 7           for the plan year.

8           “(B) APPLICABLE PERCENTAGE.—For  
 9           purposes of subparagraph (A)—

10           “(i) IN GENERAL.—Except as pro-  
 11           vided in clause (ii), the applicable percent-  
 12           age shall be 93 percent for plan years be-  
 13           ginning in 2007, 96 percent for plan years  
 14           beginning in 2008, and 100 percent for  
 15           any succeeding plan year.

16           “(ii) SMALL PLANS.—In the case of a  
 17           plan described in subsection (g)(1)(B)(ii),  
 18           the applicable percentage shall be deter-  
 19           mined in accordance with the following  
 20           table:

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

21           “(d) AMORTIZATION OF WAIVED FUNDING DEFI-  
 22           CIENCY.—For purposes of this section—

1           “(1) IN GENERAL.—The waiver amortization  
2 payment for any plan year is the aggregate amount  
3 of the waiver amortization installments determined  
4 for the plan year with respect to any waived funding  
5 deficiency for each of the 5 preceding plan years.

6           “(2) WAIVER AMORTIZATION INSTALLMENTS.—  
7 If a plan has a waived funding deficiency for any  
8 plan year—

9                   “(A) the deficiency shall be amortized in 5  
10 level amortization amounts over the 5-plan year  
11 period beginning with the succeeding plan year,  
12 and

13                   “(B) the waiver amortization installment  
14 with respect to the deficiency for each of the 5  
15 plan years shall be the fixed amount necessary  
16 to amortize the deficiency as provided under  
17 subparagraph (A).

18           “(3) COMPUTATION ASSUMPTIONS.—In making  
19 any determination under paragraph (2) with respect  
20 to the amount of any amortization installment, the  
21 following rules shall apply:

22                   “(A) Each amortization installment will be  
23 treated as made on the valuation date for the  
24 plan year for which the installment is deter-  
25 mined.

1           “(B) The interest rates used shall be the  
2           interest rates determined under the yield curve  
3           method under subsection (h)(2)(B) for the plan  
4           year in which the waived funding deficiency to  
5           which the installment relates arose.

6           “(4) WAIVED FUNDING DEFICIENCY.—The  
7           waived funding deficiency of a plan for any plan  
8           year is the amount of any waived funding deficiency  
9           for the plan year under section 412(d).

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

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

20           “(2) PREFUNDING BALANCE.—

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

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

6 “(B) INCREASES.—

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

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

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

16 “(ii) ADJUSTMENTS FOR INTEREST.—  
17 Any excess contributions under clause (i)  
18 shall be properly adjusted for interest ac-  
19 cruing for the periods between the first  
20 day of the current plan year and the dates  
21 on which the excess contributions were  
22 made, determined by using the applicable  
23 effective interest rate (as defined in sub-  
24 section (g)(3)) for the preceding plan year  
25 and by treating contributions as being first

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

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

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

16          “(D) ADJUSTMENTS FOR INVESTMENT EX-  
17          PERIENCE.—In determining the prefunding bal-  
18          ance of a plan as of the first day of the plan  
19          year, the plan sponsor shall, in accordance with  
20          regulations prescribed by the Secretary, adjust  
21          such balance to reflect the rate of net gain or  
22          loss with respect to plan assets for the pre-  
23          ceding plan year. Notwithstanding subsection  
24          (g)(2)(B), such rate of net gain or loss shall be  
25          determined on the basis of fair market value

1 and shall properly take into account, in accord-  
2 ance with such regulations, all contributions,  
3 distributions, and other plan payments made  
4 during such period.

5 “(3) REDUCTION IN VALUE OF ASSETS.—Solely  
6 for purposes of applying subsections (a)(3) and  
7 (c)(2) in determining the minimum required con-  
8 tribution under this section, the value of the plan as-  
9 sets otherwise determined under subsection (g)(2)  
10 shall be reduced by the amount of the prefunding  
11 balance under this subsection.

12 “(f) SPECIAL RULES FOR LARGE PLANS MAIN-  
13 TAINED BY FINANCIALLY-WEAK EMPLOYERS.—

14 “(1) DETERMINATION OF TARGET LIABILITY  
15 AND NORMAL COST.—

16 “(A) IN GENERAL.—If, as of the valuation  
17 date for any plan year, any plan sponsor of a  
18 plan to which this section applies is a finan-  
19 cially-weak employer, then, in applying this sec-  
20 tion for the plan year, the at-risk target liability  
21 and at-risk target normal cost shall (if greater)  
22 be substituted for the target liability and target  
23 normal cost, respectively. Such substitution  
24 shall not be applied for any plan year for which  
25 the plan has no unfunded target liability (deter-

1           mined without regard to this subsection or any  
2           reduction in the value of assets under sub-  
3           section (e)(3)).

4           “(B) EXCEPTION FOR SMALL PLANS.—  
5           This subsection shall not apply to a plan for a  
6           plan year if the plan was described in sub-  
7           section (g)(1)(B)(ii) for the preceding plan  
8           year, determined by substituting ‘500’ for ‘100’.

9           “(C) EXCEPTION FOR PLANS MAINTAINED  
10          BY CERTAIN COOPERATIVES.—This subsection  
11          shall not apply to a plan for a plan year if the  
12          plan is maintained by more than 1 employer  
13          and at least 85 percent of the employers are—

14                 “(i) rural cooperatives (as defined in  
15                 section 401(k)(7)(B) without regard to  
16                 clause (iv) thereof), or

17                 “(ii) organizations described in section  
18                 1381(a) more than 50 percent of the own-  
19                 ership or capital and profits interests of  
20                 which are held—

21                         “(I) by producers of agricultural  
22                         products, or

23                         “(II) organizations described in  
24                         section 1381(a) meeting the require-  
25                         ments of subclause (I).

1           “(D) PLANS LOSING EXEMPTION.—If sub-  
2 paragraph (B) or (C) does not apply to a plan  
3 year but did apply for the preceding plan year,  
4 no plan year preceding the current plan year  
5 shall be taken into account for purposes of  
6 paragraph (3) or (4)(A).

7           “(2) AT-RISK AMOUNTS.—

8           “(A) IN GENERAL.—Except as provided in  
9 paragraph (3), the at-risk target liability and  
10 at-risk target normal cost shall be determined  
11 in the same manner as the target liability and  
12 target normal cost, except that the actuarial as-  
13 sumptions described in subparagraph (B) shall  
14 be used in computing such amounts.

15           “(B) ACTUARIAL ASSUMPTIONS.—The ac-  
16 tuarial assumptions described in this subpara-  
17 graph are as follows:

18           “(i) All employees who are not other-  
19 wise assumed to retire as of the valuation  
20 date shall be assumed to retire at the ear-  
21 liest retirement age under the plan but not  
22 before the end of the plan year for which  
23 the at-risk target liability and at-risk tar-  
24 get normal cost are being determined.

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

7           “(3) PLAN SPONSORS FINANCIALLY WEAK FOR  
8           LESS THAN 5 YEARS.—

9           “(A) IN GENERAL.—If a plan sponsor to  
10          which this subsection applies for any plan year  
11          was not a financially-weak employer on the  
12          valuation date for each of the 4 immediately  
13          preceding plan years, the at-risk target liability  
14          or at-risk target normal cost shall be equal to  
15          the sum of—

16               “(i) the applicable percentage of the  
17               at-risk target liability or the at-risk target  
18               normal cost, whichever is applicable, deter-  
19               mined under this subsection (without re-  
20               gard to this paragraph), and

21               “(ii) the product of the target liability  
22               or the target normal cost, whichever is ap-  
23               plicable, determined without regard to this  
24               subsection, and a percentage equal to 100  
25               percent minus the applicable percentage.

1                   “(B) APPLICABLE PERCENTAGE.—For  
 2                   purposes of subparagraph (A), the applicable  
 3                   percentage shall be determined in accordance  
 4                   with the following table:

<b>“If the consecutive number of years (including the plan year) the plan sponsor is financially weak is—</b>	<b>The applicable percentage is—</b>
1 .....	20
2 .....	40
3 .....	60
4 .....	80.

5                   “(4) FINANCIALLY-WEAK EMPLOYER.—

6                   “(A) IN GENERAL.—For purposes of this  
 7                   subsection, the term ‘financially-weak employer’  
 8                   means any employer if, as of the valuation date  
 9                   for each of the 3 consecutive plan years ending  
 10                  with the plan year—

11                  “(i) the employer has an outstanding  
 12                  senior unsecured debt instrument which is  
 13                  rated lower than investment grade by each  
 14                  of the nationally recognized statistical rat-  
 15                  ing organizations for corporate bonds that  
 16                  has issued a credit rating for such instru-  
 17                  ment, or

18                  “(ii) if no such debt instrument has  
 19                  been rated by such an organization but 1  
 20                  or more of such organizations has made an  
 21                  issuer credit rating for such employer, all

1           such organizations which have so rated the  
2           employer have rated such employer lower  
3           than investment grade.

4           “(B) CONTROLLED GROUP EXCEPTION.—

5           If an employer treated as a financially-weak  
6           employer under subparagraph (A) is a member  
7           of a controlled group (as defined in section  
8           412(g)(4)), the employer shall not be treated as  
9           a financially-weak employer if a significant  
10          member (as determined under regulations pre-  
11          scribed by the Secretary) of such group has an  
12          outstanding senior unsecured debt instrument  
13          that is rated as being investment grade by an  
14          organization described in subparagraph (A).

15          “(C) EMPLOYERS WITH NO RATINGS.—

16          If—

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

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

1 regulations shall also provide for the application  
2 of paragraph (5) in the case of employers treat-  
3 ed as financially weak under such regulations.

4 “(5) DETERMINATION OF CONSECUTIVE PERI-  
5 ODS WHERE EMPLOYER IS FINANCIALLY WEAK.—

6 “(A) RATINGS OF INVESTMENT GRADE OR  
7 HIGHER.—If, as of the valuation date for any  
8 plan year, any rating described in clause (i) or  
9 (ii) of paragraph (4)(A) is investment grade or  
10 higher—

11 “(i) this subsection shall not apply for  
12 the plan year, and

13 “(ii) in applying this subsection for  
14 any succeeding plan year, the plan year de-  
15 scribed in clause (i) and any preceding  
16 plan year shall not be taken into account  
17 in determining any consecutive period of  
18 plan years under paragraphs (3) and  
19 (4)(A).

20 “(B) IMPROVEMENT YEARS NOT TAKEN  
21 INTO ACCOUNT.—

22 “(i) IN GENERAL.—An improvement  
23 year shall not be taken into account in de-  
24 termining any consecutive period of plan

1 years for purposes of paragraphs (3) and  
2 (4)(A).

3 “(ii) APPLICATION OF SUBSECTION  
4 AFTER IMPROVEMENT YEAR ENDS.—Plan  
5 years immediately before and after an im-  
6 provement year (or consecutive period of  
7 improvement years) shall be treated as  
8 consecutive for purposes of paragraphs (3)  
9 and (4)(A).

10 “(iii) IMPROVEMENT YEAR.—For pur-  
11 poses of this subparagraph, the term ‘im-  
12 provement year’ means any plan year for  
13 which any rating described in clause (i) or  
14 (ii) of paragraph (4)(A) is higher than  
15 such rating for the preceding plan year.

16 “(6) YEARS BEFORE EFFECTIVE DATE.—For  
17 purposes of paragraphs (3) and (4), plan years be-  
18 ginning before 2007 shall not be taken into account.

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

21 “(1) TIME FOR MAKING DETERMINATIONS.—

22 “(A) IN GENERAL.—Except as otherwise  
23 provided in this section, all determinations  
24 under this section for a plan year shall be made

1 as of the valuation date of the plan for the plan  
2 year.

3 “(B) VALUATION DATE.—

4 “(i) IN GENERAL.—Except as pro-  
5 vided in clause (ii), the valuation date is  
6 the first day of the plan year.

7 “(ii) EXCEPTION FOR SMALL  
8 PLANS.—If, on each day during the pre-  
9 ceding plan year, a plan had 100 or fewer  
10 participants, a plan may designate any day  
11 during the plan year as its valuation date  
12 for the plan year and succeeding plan  
13 years. For purposes of this clause, all de-  
14 fined benefit plans (other than multiem-  
15 ployer plans) maintained by the same em-  
16 ployer (or any member of such employer’s  
17 controlled group (as defined in section  
18 412(g)(4))) shall be treated as 1 plan, but  
19 only participants with respect to such em-  
20 ployer or member shall be taken into ac-  
21 count.

22 “(iii) APPLICATION OF CERTAIN  
23 RULES IN DETERMINATION OF PLAN  
24 SIZE.—

1                   “(I) PLANS NOT IN EXISTENCE  
2                   IN PRECEDING YEAR.—In the case of  
3                   the first plan year of any plan, clause  
4                   (ii) shall apply to such plan by taking  
5                   into account the number of partici-  
6                   pants the plan is reasonably expected  
7                   to have on days during such first plan  
8                   year.

9                   “(II) PREDECESSORS.—Any ref-  
10                  erence in clause (ii) to an employer  
11                  shall include a reference to any prede-  
12                  cessor of such employer.

13                  “(2) DETERMINATION OF VALUE OF PLAN AS-  
14                  SETS.—For purposes of this section—

15                  “(A) IN GENERAL.—The value of plan as-  
16                  sets shall be the fair market value of the assets.

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

22                  “(i) is permitted under regulations  
23                  prescribed by the Secretary, and

24                  “(ii) does not provide for averaging of  
25                  such values over more than the period be-

1           ginning on the last day of the 4th month  
2           preceding the valuation date and ending on  
3           the valuation date (or a similar period in  
4           the case of a valuation date which is not  
5           the 1st day of a month).

6           “(C) ACCOUNTING FOR CONTRIBUTION RE-  
7           CEIPTS.—For purposes of determining the  
8           value of assets under this paragraph—

9                   “(i) PRIOR YEAR CONTRIBUTIONS.—  
10           If—

11                           “(I) an employer makes any con-  
12                           tribution to the plan after the valu-  
13                           ation date for the plan year in which  
14                           the contribution is made, and

15                           “(II) the contribution is for a  
16                           preceding plan year,  
17           the contribution shall be taken into ac-  
18           count as an asset of the plan as of the  
19           valuation date, except that in the case of  
20           any plan year beginning after 2007, only  
21           the present value (determined as of the  
22           valuation date) of such contribution may  
23           be taken into account. For purposes of the  
24           preceding sentence, present value shall be  
25           determined using the applicable effective

1 interest rate for the preceding plan year to  
2 which the contribution is properly allo-  
3 cable.

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

12 “(I) such contributions, and

13 “(II) interest on such contribu-  
14 tions for the period between the date  
15 of the contributions and the valuation  
16 date, determined by using the applica-  
17 ble effective interest rate for the plan  
18 year.

19 “(3) APPLICABLE EFFECTIVE INTEREST  
20 RATE.—For purposes of this section, the term ‘ap-  
21 plicable effective interest rate’ means, with respect  
22 to any plan year, the single rate of interest which,  
23 if used to determine the present value of benefits ac-  
24 crued or earned under the plan as of the beginning

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

3 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

4 For purposes of this section—

5 “(1) ACTUARIAL ASSUMPTIONS.—Subject to  
6 this subsection, the determination of any present  
7 value or other computation under this section shall  
8 be made on the basis of actuarial assumptions and  
9 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 “(2) INTEREST RATE ASSUMPTIONS USED.—

17 “(A) IN GENERAL.—Except as provided in  
18 this section, the determination of present value  
19 or other computation requiring any interest rate  
20 assumption shall be made—

21 “(i) in the case of plan years begin-  
22 ning in 2007 or 2008, by using the phase-  
23 in yield curve method (as defined in sub-  
24 paragraph (C)), and

1           “(ii) in the case of plan years begin-  
2           ning after 2008, by using the yield curve  
3           method (as defined in subparagraph (B)).

4           “(B) YIELD CURVE METHOD.—For pur-  
5           poses of this paragraph—

6           “(i) IN GENERAL.—The yield curve  
7           method is a method under which present  
8           value or other amounts requiring interest  
9           rate assumptions are determined—

10           “(I) by using interest rates  
11           drawn from a yield curve which is pre-  
12           scribed by the Secretary and which re-  
13           flects the yield on high-quality cor-  
14           porate bonds with varying maturities,  
15           and

16           “(II) by matching the timing of  
17           the expected benefit payments under  
18           the plan to the interest rates on such  
19           yield curve.

20           “(ii) PUBLICATION.—Each month the  
21           Secretary shall publish any yield curve pre-  
22           scribed under this subparagraph which  
23           shall apply to plan years beginning in such  
24           month and such yield curve shall be based

1 on average interest rates for business days  
2 occurring during the 3 preceding months.

3 “(C) PHASE-IN YIELD CURVE METHOD.—

4 “(i) IN GENERAL.—Present value or  
5 any other amount requiring the use of in-  
6 terest rate assumptions determined under  
7 the phase-in yield curve method shall be  
8 equal to the sum of—

9 “(I) the applicable percentage of  
10 such amount determined under the  
11 yield curve method described in sub-  
12 paragraph (B), and

13 “(II) the product of such amount  
14 determined by using the interest rate  
15 rules in effect under section 412(b)(5)  
16 for plan years beginning in 2006 and  
17 a percentage equal to 100 percent  
18 minus the applicable percentage.

19 “(ii) APPLICABLE PERCENTAGE.—For  
20 purposes of clause (i), the applicable per-  
21 centage is 33 percent for plan years begin-  
22 ning in 2007 and 67 percent for plan years  
23 beginning in 2008.

24 “(3) MORTALITY TABLE USED.—

1           “(A) SECRETARIAL AUTHORITY.—The Sec-  
2           retary shall by regulation prescribe mortality  
3           tables to be used under this subsection. Such  
4           tables shall be based upon the actual experience  
5           of pension plans and projected trends in such  
6           experience. In prescribing such tables, the Sec-  
7           retary shall take into account results of avail-  
8           able independent studies of mortality of individ-  
9           uals covered by pension plans.

10           “(B) SEPARATE MORTALITY TABLES FOR  
11           THE DISABLED.—Notwithstanding subpara-  
12           graph (A)—

13           “(i) IN GENERAL.—The Secretary  
14           shall establish mortality tables which may  
15           be used (in lieu of the tables under sub-  
16           paragraph (A)) under this subsection for  
17           individuals who are entitled to benefits  
18           under the plan on account of disability.  
19           The Secretary shall establish separate ta-  
20           bles for individuals whose disabilities occur  
21           in plan years beginning before January 1,  
22           1995, and for individuals whose disabilities  
23           occur in plan years beginning on or after  
24           such date.

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

10                   “(C) PERIODIC REVIEW.—The Secretary  
11                   shall periodically (at least every 5 years) review  
12                   any tables in effect under this paragraph and  
13                   shall, to the extent the Secretary determines  
14                   necessary, update the tables to reflect the ac-  
15                   tual experience of pension plans and projected  
16                   trends in such experience.

17                   “(4) TREATMENT OF OPTIONAL FORMS OF  
18                   BENEFITS.—For purposes of determining any  
19                   present value or making any computation under this  
20                   section, there shall be taken into account—

21                   “(A) the probability that future payments  
22                   will be made in an optional form of benefit pro-  
23                   vided under the plan (including lump sum pay-  
24                   ments), and

1           “(B) any differences between the present  
2 value of any such optional form of benefit and  
3 the present value of the future payments used  
4 in computing target normal costs and target li-  
5 ability under this section.

6           “(5) APPROVAL REQUIRED FOR CERTAIN  
7 CHANGES IN ASSUMPTIONS BY CERTAIN PLANS.—

8           “(A) IN GENERAL.—No actuarial assump-  
9 tion used to determine the target liability for a  
10 plan to which this paragraph applies may be  
11 changed without the approval of the Secretary.  
12 The preceding sentence shall not apply to  
13 changes required under paragraph (2) or (3)  
14 with respect to any assumption.

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

18           “(i) the plan is a defined benefit plan  
19 to which title IV of the Employee Retire-  
20 ment Income Security Act of 1974 applies;

21           “(ii) the aggregate unfunded target li-  
22 abilities as of the close of the preceding  
23 plan year of—

24           “(I) such plan, and

1           “(II) all other plans to which  
2           such title IV applies maintained by  
3           persons which are liable for payment  
4           of contributions to such plan under  
5           section 412(c),

6           exceed \$50,000,000; and

7           “(iii) the change in assumptions (de-  
8           termined after taking into account any  
9           changes as a result of the application of  
10          paragraphs (2) and (3)) results in a de-  
11          crease in the unfunded target liability of  
12          the plan for the current plan year which—

13                   “(I) exceeds \$50,000,000, or

14                   “(II) exceeds \$5,000,000 and is  
15                   5 percent or more of the target liabil-  
16                   ity of the plan before such change.

17          “(i) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
18          TION.—

19                   “(1) IN GENERAL.—The due date for any pay-  
20                   ment of any minimum required contribution for any  
21                   plan year shall be 8½ months after the close of the  
22                   plan year.

23                   “(2) INTEREST.—Any minimum required con-  
24                   tribution for a plan year which is made on a date  
25                   other than the valuation date for such plan year

1 shall be properly adjusted for interest accruing for  
2 the period between the valuation date and the pay-  
3 ment date, determined by using the applicable effec-  
4 tive interest rate (as defined in subsection (g)(3))  
5 for the plan year.

6 “(j) QUARTERLY CONTRIBUTIONS REQUIRED.—

7 “(1) FAILURE TO TIMELY MAKE REQUIRED IN-  
8 STALLMENT.—

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

21 “(B) PLANS TO WHICH SUBSECTION AP-  
22 PLIES.—This subsection applies to any defined  
23 benefit plan to which this section applies other  
24 than a plan which—

1                   “(i) is a plan described in subsection  
2                   (g)(1)(B)(ii)), or

3                   “(ii) had an unfunded target liability  
4                   of \$1,000,000 or less for the preceding  
5                   plan year.

6                   “(2) AMOUNT OF UNDERPAYMENT, PERIOD OF  
7                   UNDERPAYMENT.—For purposes of paragraph (1)—

8                   “(A) AMOUNT.—The amount of the under-  
9                   payment shall be the excess of—

10                   “(i) the required installment, over

11                   “(ii) the amount (if any) of the in-  
12                   stallment contributed to or under the plan  
13                   on or before the due date for the install-  
14                   ment.

15                   “(B) PERIOD OF UNDERPAYMENT.—The  
16                   period for which interest is charged under this  
17                   subsection with regard to any portion of the un-  
18                   derpayment shall run from the due date for the  
19                   installment to the date on which such portion is  
20                   contributed to or under the plan.

21                   “(C) ORDER OF CREDITING CONTRIBU-  
22                   TIONS.—For purposes of subparagraph (A)(ii),  
23                   contributions shall be credited against unpaid  
24                   required installments in the order in which such  
25                   installments are required to be paid.

1           “(3) NUMBER OF REQUIRED INSTALLMENTS;  
2 DUE DATES.—For purposes of this subsection—

3           “(A) PAYABLE IN 4 INSTALLMENTS.—  
4 There shall be 4 required installments for each  
5 plan year.

6           “(B) TIME FOR PAYMENT OF INSTALL-  
7 MENTS.—

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

8           “(4) AMOUNT OF REQUIRED INSTALLMENT.—  
9 For purposes of this subsection—

10           “(A) IN GENERAL.—The amount of any  
11 required installment shall be 25 percent of the  
12 required annual payment.

13           “(B) REQUIRED ANNUAL PAYMENT.—For  
14 purposes of subparagraph (A), the term ‘re-  
15 quired annual payment’ means the lesser of—

16           “(i) 90 percent of the minimum re-  
17 quired contribution under subsection (a)  
18 required to be contributed to or under the  
19 plan by the employer for the plan year, or

20           “(ii) 100 percent of the minimum re-  
21 quired contribution so required for the pre-

1           ceding plan year (without regard to any  
2           waiver under section 412(d)).

3           Clause (ii) shall not apply if the preceding plan  
4           year was not a year of 12 months. In the case  
5           of any plan year beginning in 2007, the amount  
6           under clause (ii) for the preceding plan year  
7           shall be determined by reference to the amount  
8           required to be contributed to or under the plan  
9           under section 412 (as such section was in effect  
10          before the date of the enactment of this part).

11          “(5) LIQUIDITY REQUIREMENT.—

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

21                 “(B) PLANS TO WHICH PARAGRAPH AP-  
22                 PLIES.—This paragraph shall apply to a de-  
23                 fined benefit plan—

24                         “(i) to which this subsection applies  
25                         for a plan year, and

1           “(ii) which has a liquidity shortfall for  
2           any quarter during such plan year.

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

9           “(D) LIMITATION ON INCREASE.—In no  
10          event shall the increase in the amount of any  
11          required installment under subparagraph (A)  
12          exceed the sum of the unfunded target liability  
13          and target normal cost for the plan year.

14          “(E) DEFINITIONS.—For purposes of this  
15          paragraph—

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

24               “(ii) BASE AMOUNT.—

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

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

22          “(iii) DISBURSEMENTS FROM THE  
23          PLAN.—The term ‘disbursements from the  
24          plan’ means all disbursements from the  
25          trust, including purchases of annuities,

1 payments of single sums and other bene-  
2 fits, and administrative expenses.

3 “(iv) ADJUSTED DISBURSEMENTS.—

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

7 “(I) the plan’s funded target li-  
8 ability percentage (as defined in sec-  
9 tion 436(e)) for the plan year, and

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

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

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

23 “(6) FISCAL YEARS AND SHORT YEARS.—

24 “(A) FISCAL YEARS.—In applying this  
25 subsection to a plan year beginning on any date

1 other than January 1, there shall be substituted  
2 for the months specified in this subsection the  
3 months which correspond thereto.

4 “(B) SHORT PLAN YEAR.—This subsection  
5 shall be applied to plan years of less than 12  
6 months in accordance with regulations pre-  
7 scribed by the Secretary.

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

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

12 “(A) any person fails to make a required  
13 installment under subsection (j) or any other  
14 payment required under this section before the  
15 due date for such installment or other payment,  
16 and

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

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

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

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

6 This subsection shall apply to a defined benefit plan  
7 for any plan year for which the funded target liabil-  
8 ity percentage (within the meaning of section  
9 436(e)) of such plan is less than 100 percent. This  
10 subsection shall not apply to any plan to which sec-  
11 tion 4021 of the Employee Retirement Income Secu-  
12 rity Act of 1974 does not apply.

13 “(3) AMOUNT OF LIEN.—For purposes of para-

14 graph (1), the amount of the lien shall be equal to  
15 the aggregate unpaid balance of required install-  
16 ments and other payments required under this sec-  
17 tion (including interest) for which payment has not  
18 been made before the due date.

19 “(4) NOTICE OF FAILURE; LIEN.—

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

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

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

19           “(5) ENFORCEMENT.—Any lien created under  
20           paragraph (1) may be perfected and enforced only  
21           by the Pension Benefit Guaranty Corporation, or at  
22           the direction of the Pension Benefit Guaranty Cor-  
23           poration, by the contributing sponsor (or any mem-  
24           ber of the controlled group (as defined in section  
25           412(g)(4)) of the contributing sponsor).



1 lated funding deficiency of the plan for any plan year for  
2 purposes of section 412 shall be—

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

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

13 “(b) FUNDING STANDARD ACCOUNT.—

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

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

22 “(A) the normal cost of the plan for the  
23 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 this sec-  
8 tion applies, over a period of 40 plan  
9 years,

10          “(ii) in the case of a plan which comes  
11 into existence after January 1, 1974, the  
12 unfunded past service liability under the  
13 plan on the first day of the first plan year  
14 to which this section applies, over a period  
15 of 30 plan years,

16          “(iii) separately, with respect to each  
17 plan year, the net increase (if any) in un-  
18 funded past service liability under the plan  
19 arising from plan amendments adopted in  
20 such year, over a period of 30 plan years,

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

1           “(v) separately, with respect to each  
2           plan year, the net loss (if any) resulting  
3           from changes in actuarial assumptions  
4           used under the plan, over a period of 30  
5           plan years,

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

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

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

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 30 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 30  
23                           plan years,

1           “(C) the amount of the waived funding de-  
2           ficiency (within the meaning of section  
3           412(d)(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 this section), the excess (if  
12          any) of any debit balance in the funding stand-  
13          ard account (determined without regard to this  
14          subparagraph) over any debit balance in the al-  
15          ternative minimum funding standard account.

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

21                 “(A) may be combined into one amount  
22                 under such paragraph to be amortized over a  
23                 period determined on the basis of the remaining  
24                 amortization period for all items entering into  
25                 such combined amount, and

1           “(B) may be offset against amounts re-  
2           quired to be amortized under the other such  
3           paragraph, with the resulting amount to be am-  
4           ortized over a period determined on the basis of  
5           the remaining amortization periods for all items  
6           entering into whichever of the two amounts  
7           being offset is the greater.

8           “(5) INTEREST.—The funding standard ac-  
9           count (and items therein) shall be charged or cred-  
10          ited (as determined under regulations prescribed by  
11          the Secretary) with interest at the appropriate rate  
12          consistent with the rate or rates of interest used  
13          under the plan to determine costs.

14          “(6) CERTAIN AMORTIZATION CHARGES AND  
15          CREDITS.—In the case of a plan which, immediately  
16          before the date of the enactment of the Multiem-  
17          ployer Pension Plan Amendments Act of 1980, was  
18          a multiemployer plan (within the meaning of section  
19          414(f) as in effect immediately before such date)—

20                 “(A) any amount described in paragraph  
21                 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-  
22                 section which arose in a plan year beginning be-  
23                 fore such date shall be amortized in equal an-  
24                 nual installments (until fully amortized) over 40

1 plan years, beginning with the plan year in  
2 which the amount arose;

3 “(B) any amount described in paragraph  
4 (2)(B)(iv) or (3)(B)(ii) of this subsection which  
5 arose in a plan year beginning before such date  
6 shall be amortized in equal annual installments  
7 (until fully amortized) over 20 plan years, be-  
8 ginning with the plan year in which the amount  
9 arose;

10 “(C) any change in past service liability  
11 which arises during the period of 3 plan years  
12 beginning on or after such date, and results  
13 from a plan amendment adopted before such  
14 date, shall be amortized in equal annual install-  
15 ments (until fully amortized) over 40 plan  
16 years, beginning with the plan year in which the  
17 change arises; and

18 “(D) any change in past service liability  
19 which arises during the period of 2 plan years  
20 beginning on or after such date, and results  
21 from the changing of a group of participants  
22 from one benefit level to another benefit level  
23 under a schedule of plan benefits which—

24 “(i) was adopted before such date,  
25 and

1           “(ii) was effective for any plan partici-  
2           pant before the beginning of the first plan  
3           year beginning on or after such date,  
4           shall be amortized in equal annual installments  
5           (until fully amortized) over 40 plan years, be-  
6           ginning with the plan year in which the change  
7           arises.

8           “(7) SPECIAL RULES.—For purposes of this  
9           section—

10           “(A) WITHDRAWAL LIABILITY.—Any  
11           amount received by a multiemployer plan in  
12           payment of all or part of an employer’s with-  
13           drawal liability under part 1 of subtitle E of  
14           title IV of the Employee Retirement Income Se-  
15           curity Act of 1974 shall be considered an  
16           amount contributed by the employer to or  
17           under the plan. The Secretary may prescribe by  
18           regulation additional charges and credits to a  
19           multiemployer plan’s funding standard account  
20           to the extent necessary to prevent withdrawal li-  
21           ability payments from being unduly reflected as  
22           advance funding for plan liabilities.

23           “(B) ADJUSTMENTS WHEN A MULTIEM-  
24           PLOYER PLAN LEAVES REORGANIZATION.—If a  
25           multiemployer plan is not in reorganization in

1 the plan year but was in reorganization in the  
2 immediately preceding plan year, any balance in  
3 the funding standard account at the close of  
4 such immediately preceding plan year—

5 “(i) shall be eliminated by an offset-  
6 ting credit or charge (as the case may be),  
7 but

8 “(ii) shall be taken into account in  
9 subsequent plan years by being amortized  
10 in equal annual installments (until fully  
11 amortized) over 30 plan years.

12 The preceding sentence shall not apply to the  
13 extent of any accumulated funding deficiency  
14 under section 418B(a) as of the end of the last  
15 plan year that the plan was in reorganization.

16 “(C) PLAN PAYMENTS TO SUPPLEMENTAL  
17 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT  
18 FUND.—Any amount paid by a plan during a  
19 plan year to the Pension Benefit Guaranty Cor-  
20 poration pursuant to section 4222 of such Act  
21 or to a fund exempt under section 501(c)(22)  
22 pursuant to section 4223 of such Act shall re-  
23 duce the amount of contributions considered re-  
24 ceived by the plan for the plan year.

1           “(D) INTERIM WITHDRAWAL LIABILITY  
2 PAYMENTS.—Any amount paid by an employer  
3 pending a final determination of the employer’s  
4 withdrawal liability under part 1 of subtitle E  
5 of title IV of such Act and subsequently re-  
6 funded to the employer by the plan shall be  
7 charged to the funding standard account in ac-  
8 cordance with regulations prescribed by the  
9 Secretary.

10           “(E) ELECTION FOR DEFERRAL OF  
11 CHARGE FOR PORTION OF NET EXPERIENCE  
12 LOSS.—If an election is in effect under section  
13 412(b)(7)(F) (as in effect on the day before the  
14 date of the enactment of this section) for any  
15 plan year, the funding standard account shall  
16 be charged in the plan year to which the por-  
17 tion of the net experience loss was deferred in  
18 the same manner as required under such sec-  
19 tion (and paragraph (2)(B)(iv) shall not apply  
20 to the amount so charged) .

21           “(F) FINANCIAL ASSISTANCE.—Any  
22 amount of any financial assistance from the  
23 Pension Benefit Guaranty Corporation to any  
24 plan, and any repayment of such amount, shall  
25 be taken into account under this section and

1 section 412 in such manner as determined by  
2 the Secretary.

3 “(c) SPECIAL 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) which, in the aggregate, are reason-  
11 able (taking into account the experience of the  
12 plan and reasonable 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 paragraphs  
13 (2)(B), (C), and (D) and (3)(B) of subsection  
14 (b) which are required to be amortized shall be  
15 considered fully amortized for purposes of such  
16 paragraphs.

17 “(6) FULL-FUNDING LIMITATION.—

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

21 “(i) the accrued liability (including  
22 normal cost) under the plan (determined  
23 under the entry age normal funding meth-  
24 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                   For purposes of subparagraph (A), unless oth-  
9                   erwise provided by the plan, the accrued liabil-  
10                   ity under a plan shall not include benefits which  
11                   are not nonforfeitable under the plan after the  
12                   termination of the plan (taking into consider-  
13                   ation section 411(d)(3)).

14                   “(B) MINIMUM AMOUNT.—

15                                 “(i) IN GENERAL.—In no event shall  
16                                 the full-funding limitation determined  
17                                 under subparagraph (A) be less than the  
18                                 excess (if any) of—

19   “(I) 90 percent of the current li-  
20   ability of the plan (including the ex-  
21   pected increase in current liability due  
22   to benefits accruing during the plan  
23   year), over

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

1           “(ii) ASSETS.—For purposes of clause  
2           (i), assets shall not be reduced by any  
3           credit balance in the funding standard ac-  
4           count.

5           “(C) CURRENT LIABILITY.—For purposes  
6           of this paragraph—

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

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

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

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

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

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

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

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.—The Sec-  
10 retary shall establish mortality tables  
11 which may be used (in lieu of the ta-  
12 bles under clause (ii)) to determine  
13 current liability under this subsection  
14 for individuals who are entitled to  
15 benefits under the plan on account of  
16 disability. The Secretary shall estab-  
17 lish separate tables for individuals  
18 whose disabilities occur in plan years  
19 beginning before January 1, 1995,  
20 and for individuals whose disabilities  
21 occur in plan years beginning on or  
22 after such date.

23 “(II) SPECIAL RULE FOR DIS-  
24 ABILITIES OCCURRING AFTER 1994.—  
25 In the case of disabilities occurring in

1 plan years beginning after December  
2 31, 1994, the tables under subclause  
3 (I) shall apply only with respect to in-  
4 dividuals described in such subclause  
5 who are disabled within the meaning  
6 of title II of the Social Security Act  
7 and the regulations thereunder.

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

16 “(D) REQUIRED CHANGE OF INTEREST  
17 RATE.—For purposes of determining a plan’s  
18 current liability for purposes of this para-  
19 graph—

20 “(i) IN GENERAL.—If any rate of in-  
21 terest used under the plan under sub-  
22 section (b)(5) to determine cost is not  
23 within the permissible range, the plan shall  
24 establish a new rate of interest within the  
25 permissible range.

1           “(ii) PERMISSIBLE RANGE.—For pur-  
2 poses of this subparagraph—

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

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

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

1                   “(I) determined without taking  
2                   into account the experience of the  
3                   plan and reasonable expectations, but

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

9                   “(7) ANNUAL VALUATION.—

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

18                   “(B) VALUATION DATE.—

19                   “(i) CURRENT YEAR.—Except as pro-  
20                   vided in clause (ii), the valuation referred  
21                   to in subparagraph (A) shall be made as of  
22                   a date within the plan year to which the  
23                   valuation refers or within one month prior  
24                   to the beginning of such year.

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

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

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

24          “(8) TIME WHEN CERTAIN CONTRIBUTIONS  
25          DEEMED MADE.—For purposes of this section, any

1 contributions for a plan year made by an employer  
2 after the last day of such plan year, but not later  
3 than two and one-half months after such day, shall  
4 be deemed to have been made on such last day. For  
5 purposes of this subparagraph, such two and one-  
6 half month period may be extended for not more  
7 than six months under regulations prescribed by the  
8 Secretary.”.

9 (b) CONFORMING AMENDMENT.—The table of parts  
10 for subchapter D of chapter 1 of such Code is amended  
11 by adding at the end the following new item:

“Part III. Rules relating to minimum funding standards and benefit limita-  
tions.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to plan years beginning after De-  
14 cember 31, 2006.

15 **SEC. 303. LIMITATION ON BENEFIT IMPROVEMENTS BY SIN-**  
16 **GLE-EMPLOYER PLANS WHICH ARE UNDER-**  
17 **FUNDED OR MAINTAINED BY FINANCIALLY**  
18 **WEAK OR BANKRUPT EMPLOYERS.**

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

1    **“Subpart B—Limitations on Benefit Improvements**  
 2                                   **by Single-Employer Plans**

“Sec. 436. Limitations on benefit improvements by single-employer plans which are underfunded or maintained by financially weak or bankrupt employers.

3    **“SEC. 436. LIMITATIONS ON BENEFIT IMPROVEMENTS BY**  
 4                                   **SINGLE-EMPLOYER PLANS WHICH ARE UN-**  
 5                                   **DERFUNDED OR MAINTAINED BY FINAN-**  
 6                                   **CIALY WEAK EMPLOYERS.**

7           “(a) BENEFIT LIMITATION REQUIREMENTS.—For  
 8 purposes of section 401(a)(29), except as provided in sub-  
 9 section (f)(5), a defined benefit plan which is a single-em-  
 10 ployer plan shall be treated as meeting the requirements  
 11 of this section if the plan meets the requirements of sub-  
 12 sections (b), (c), and (d).

13           “(b) LIMITATIONS ON BENEFIT INCREASES.—

14                   “(1) IN GENERAL.—A plan meets the require-  
 15 ments of this subsection for any plan year if the  
 16 plan provides that if the plan’s adjusted funded tar-  
 17 get liability percentage for the preceding plan year  
 18 is less than 80 percent, any applicable benefit in-  
 19 crease shall not take effect during the plan year  
 20 until the plan has met the additional funding re-  
 21 quirements of paragraph (2).

22                   “(2) ADDITIONAL FUNDING REQUIREMENTS.—

1           “(A) IN GENERAL.—The requirements of  
2 this paragraph are met with respect to any ap-  
3 plicable benefit increase for any plan year if the  
4 plan sponsor, in addition to any other contribu-  
5 tion required under section 430, contributes to  
6 or under the plan an amount (if any) which,  
7 when added to the portion of the minimum re-  
8 quired contribution for the plan year described  
9 in subparagraphs (B) and (C) of section  
10 430(a)(1), is sufficient to result in the adjusted  
11 funded target liability percentage of the plan  
12 for the plan year being equal to 80 percent.

13           “(B) BENEFIT INCREASES COUNTED FOR  
14 PURPOSES OF FUNDED PERCENTAGE.—For  
15 purposes of subparagraph (A), the adjusted  
16 funded target liability percentage shall be deter-  
17 mined by taking into account all increases in li-  
18 abilities of the plan which would have been  
19 taken into account in determining such percent-  
20 age if the applicable benefit increase had taken  
21 effect as of the beginning of the plan year.

22           “(C) PAYMENTS AFTER VALUATION  
23 DATE.—In the case of any contribution required  
24 by this subsection which is made after the first  
25 day of the plan year, the amount of the con-

1           tribution shall be adjusted in the same manner  
2           as it would be under section 430(i)(2) if it were  
3           a minimum required contribution for the plan  
4           year.

5           “(D) TREATMENT OF PAYMENT IN COM-  
6           PUTING MINIMUM REQUIRED CONTRIBUTION.—  
7           If any applicable benefit increase to which this  
8           subsection applies for any plan year is required  
9           to be taken into account in determining the  
10          minimum required contribution under section  
11          430 for the plan year, any payment required by  
12          this paragraph with respect to the applicable  
13          benefit increase shall, for purposes of deter-  
14          mining the amount of such minimum required  
15          contribution, be treated in the same manner as  
16          a contribution for a preceding plan year is  
17          treated under section 430(g)(2)(C)(i).

18          “(3) APPLICABLE BENEFIT INCREASE.—For  
19          purposes of this subsection—

20                 “(A) IN GENERAL.—The term ‘applicable  
21                 benefit increase’ means, with respect to any  
22                 plan year, any increase in liabilities of the plan  
23                 by plan amendment (or otherwise as provided in  
24                 regulations prescribed by the Secretary) which,

1 but for this subsection, would occur during the  
2 plan year by reason of—

3 “(i) any increase in benefits,

4 “(ii) any change in the accrual of ben-  
5 efits, or

6 “(iii) any change in the rate at which  
7 benefits become nonforfeitable under the  
8 plan.

9 “(B) EXCEPTION FOR CERTAIN BENEFIT  
10 INCREASES.—In the case of a plan maintained  
11 pursuant to 1 or more collective bargaining  
12 agreements between employee representatives  
13 and 1 or more plan sponsors, such term shall  
14 not include any increase in liabilities of the plan  
15 by reason of any increase in benefits pursuant  
16 to, and for individuals covered by, the agree-  
17 ments under a formula which is not based on  
18 a participant’s compensation, but only if the  
19 rate of such increase is not in excess of the con-  
20 temporaneous rate of increase in average wages  
21 of participants covered by the amendment.

22 “(C) EXCEPTION FOR COLLECTIVELY BAR-  
23 GAINED INCREASES NEGOTIATED BEFORE  
24 UNDERFUNDING OCCURS.—In the case of a  
25 plan maintained pursuant to 1 or more collec-

1           tive bargaining agreements between employee  
2           representatives and 1 or more plan sponsors  
3           and ratified in a plan year with respect to  
4           which the adjusted funded target liability per-  
5           centage was at least 80 percent, such term shall  
6           not include any increase or change described in  
7           subparagraph (A) pursuant to, and for individ-  
8           uals covered by, the agreements which takes ef-  
9           fect in any plan year beginning after the plan  
10          year in which the agreements are ratified and  
11          before the earlier of—

12                   “(i) the date on which the last of such  
13                   collective bargaining agreement terminates  
14                   (determined without regard to any exten-  
15                   sion thereof), or

16                   “(ii) the date which is 3 years after  
17                   the date on which this subsection would  
18                   otherwise apply but for this subparagraph.

19           “(D) OTHER EXCEPTIONS.—Such term  
20          shall not include any increase in liabilities—

21                   “(i) by reason of a plan amendment if  
22                   such amendment is required as a condition  
23                   of qualification under this part, or

24                   “(ii) which is specified in regulations  
25          prescribed by the Secretary.

1           “(4) SPECIAL RULE FOR PLANS IN BANK-  
2 RUPTCY.—In the case of any period during which  
3 the plan sponsor is in bankruptcy—

4           “(A) paragraphs (1) and (2)(A) shall be  
5 applied by substituting ‘100 percent’ for ‘80  
6 percent’, and

7           “(B) the exceptions under subparagraphs  
8 (B) and (C) of paragraph (3) shall not apply.

9           “(c) LIMITATIONS ON ACCELERATED BENEFIT DIS-  
10 TRIBUTIONS.—

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

14           “(A) if the plan’s adjusted funded target  
15 liability percentage as of the valuation date for  
16 the preceding plan year was less than 60 per-  
17 cent and the preceding plan year is not other-  
18 wise in a prohibited period, the plan sponsor  
19 shall, in addition to any other contribution re-  
20 quired under section 430, contribute for the  
21 current plan year and each succeeding plan  
22 year in the prohibited period with respect to the  
23 current plan year the amount (if any) which,  
24 when added to the portion of the minimum re-  
25 quired contribution for the plan year described

1 in subparagraphs (B) and (C) of section  
2 430(a)(1), is sufficient to result in an adjusted  
3 funded target liability percentage for the plan  
4 year of 60 percent, and

5 “(B) no prohibited payments will be made  
6 during a prohibited period.

7 “(2) PROHIBITED PAYMENT.—For purpose of  
8 this subsection—

9 “(A) IN GENERAL.—The term ‘prohibited  
10 payment’ means—

11 “(i) any payment, in excess of the  
12 monthly amount paid under a single life  
13 annuity (plus any social security supple-  
14 ments described in the last sentence of sec-  
15 tion 411(a)(9)), to a participant or bene-  
16 ficiary whose annuity starting date (as de-  
17 fined in section 417(f)(2)) occurs during a  
18 prohibited period,

19 “(ii) any payment for the purchase of  
20 an irrevocable commitment from an insurer  
21 to pay benefits, and

22 “(iii) any other payment specified by  
23 the Secretary by regulations.

24 “(B) EXCEPTION FOR CERTAIN PAY-  
25 MENTS.—In the case of any prohibited period

1 described in paragraph (3)(A), the term ‘pro-  
2 hibited payment’ shall not include any payment  
3 if the amount of the payment does not exceed  
4 the lesser of—

5 “(i) 50 percent of the amount of the  
6 payment which could be made without re-  
7 gard to this subsection, or

8 “(ii) the present value (determined  
9 under guidance prescribed by the Pension  
10 Benefit Guaranty Corporation, using the  
11 interest and mortality assumptions under  
12 section 417(e)) of the maximum guarantee  
13 with respect to the participant under sec-  
14 tion 4022 of the Employee Retirement In-  
15 come Security Act of 1974.

16 The exception under this subparagraph shall  
17 only apply once with respect to any participant,  
18 except that, for purposes of this sentence, a  
19 participant and any beneficiary on his behalf  
20 (including an alternate payee, as defined in sec-  
21 tion 414(p)(8)) shall be treated as 1 partici-  
22 pant. If the accrued benefit of a participant is  
23 allocated to such an alternate payee and 1 or  
24 more other persons, the amount under clause  
25 (ii) shall be allocated among such persons in

1 the same manner as the accrued benefit is allo-  
2 cated unless the qualified domestic relations  
3 order (as defined in section 414(p)(1)(A)) pro-  
4 vides otherwise.

5 “(3) PROHIBITED PERIOD.—For purposes of  
6 paragraph (1), the term ‘prohibited period’ means—

7 “(A) except as provided in paragraph (5),  
8 if a plan sponsor is required to make the con-  
9 tribution for the current plan year under para-  
10 graph (1), the period beginning on the 1st day  
11 of the plan year and ending on the last day of  
12 the 1st period of 2 consecutive plan years (be-  
13 ginning on or after such 1st day) for which the  
14 plan’s adjusted funded target liability percent-  
15 age was at least 60 percent,

16 “(B) any period the plan sponsor is in  
17 bankruptcy, or

18 “(C) any period during which the plan has  
19 a liquidity shortfall (as defined in section  
20 430(j)(5)(E)(i)).

21 The prohibited period for purposes of subparagraph  
22 (B) shall not include any portion of a plan year  
23 (even if the plan sponsor is in bankruptcy during  
24 such period) which occurs on or after the date the  
25 plan’s enrolled actuary certifies that, as of the valu-

1       ation date for the plan year, the plan's adjusted  
2       funded target liability percentage is at least 100 per-  
3       cent.

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

6                       “(A) SECURITY MAY BE PROVIDED.—

7                               “(i) IN GENERAL.—A plan sponsor  
8       shall not be treated as failing to meet the  
9       requirements of paragraph (1) if the plan  
10      sponsor provides security in a form meet-  
11      ing the requirements of clause (ii) for any  
12      portion of the amount required to be con-  
13      tributed under paragraph (1) but which is  
14      not so contributed. Such security shall be  
15      provided no later than the due date of the  
16      contribution to which it relates or such  
17      earlier date as the Secretary may pre-  
18      scribe.

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

22                                       “(I) a bond issued by a corporate  
23      surety company that is an acceptable  
24      surety for purposes of section 412 of

1 the Employee Retirement Income Se-  
2 curity Act of 1974,

3 “(II) cash, or United States obli-  
4 gations which mature in 3 years or  
5 less, held in escrow by a bank or simi-  
6 lar financial institution, or

7 “(III) such other form of security  
8 as is satisfactory to the Secretary and  
9 the parties involved.

10 “(iii) ENFORCEMENT.—Any security  
11 provided under clause (i) may be perfected  
12 and enforced at any time after the earlier  
13 of—

14 “(I) the date on which the plan  
15 terminates,

16 “(II) if there is a failure to make  
17 a payment of the minimum required  
18 contribution for any plan year begin-  
19 ning after the security is provided, the  
20 due date for the payment under sec-  
21 tion 430(i), or

22 “(III) if the adjusted funded tar-  
23 get liability percentage is less than 60  
24 percent for a consecutive period of 7

1                   years, the valuation date for the last  
2                   year in the period.

3                   “(iv) RELEASE OF SECURITY.—The  
4                   security shall be released (and any  
5                   amounts thereunder shall be refunded to-  
6                   gether with any interest accrued thereon)  
7                   at the end of the prohibited period for the  
8                   failure to which the security relates. The  
9                   Secretary may prescribe regulations for  
10                  partial releases of the security by reason of  
11                  increases in the adjusted funded target li-  
12                  ability percentage.

13                  “(v) SECURITY NOT TREATED AS  
14                  PLAN ASSET.—Any security under this  
15                  subparagraph shall not be taken into ac-  
16                  count in determining the value of the  
17                  plan’s assets except to the extent provided  
18                  in clause (i).

19                  “(B) TREATMENT AS UNPAID MINIMUM  
20                  REQUIRED CONTRIBUTION.—The amount of any  
21                  required contribution which a plan sponsor fails  
22                  to make under paragraph (1) by the close of  
23                  the plan year to which the contribution relates  
24                  shall be treated as an unpaid minimum required  
25                  contribution for purposes of subsection (j) and

1 (k) of section 430 and for purposes of section  
2 4971.

3 “(5) SATISFACTION OF REQUIREMENT BEFORE  
4 CLOSE OF PLAN YEAR.—If, before the close of the  
5 current plan year—

6 “(A) the plan sponsor makes the contribu-  
7 tion required to be made under paragraph (1),  
8 or

9 “(B) the plan’s enrolled actuary certifies  
10 that, as of the valuation date for the plan year,  
11 the adjusted funded target liability percentage  
12 of the plan is at least 60 percent,

13 this subsection shall be applied as if no prohibited  
14 period had begun as of the beginning of such year  
15 and the plan shall, under rules described by the Sec-  
16 retary, restore any payments not made during the  
17 prohibited period in effect before the application of  
18 this paragraph.

19 “(d) FREEZE ON PLAN BENEFITS.—

20 “(1) IN GENERAL.—The requirements of this  
21 subsection are met if the plan provides that, not-  
22 withstanding any other provision of the plan, during  
23 a freeze period—

24 “(A) the accrued benefit, any death or dis-  
25 ability benefit, and any social security supple-

1           ment described in the last sentence of section  
2           411(a)(9) of each participant are frozen at the  
3           amount of such benefit or supplement imme-  
4           diately before the freeze period, and

5                   “(B) all other benefits provided under the  
6           plan are eliminated,

7           but only to the extent the freezing or elimination of  
8           such benefits would have been permitted under sec-  
9           tion 411(d)(6) if they had been implemented by a  
10          plan amendment adopted immediately before the  
11          freeze period.

12                   “(2) FREEZE PERIOD.—For purposes of para-  
13          graph (1), the term ‘freeze period’ means any period  
14          treated as a prohibited period under subsection  
15          (c)(3)(A). A rule similar to the rule of subsection  
16          (c)(5) shall apply for purposes of this subsection.

17                   “(3) COLLECTIVELY BARGAINED PLANS.—In  
18          the case of a plan maintained pursuant to 1 or more  
19          collective bargaining agreements between employee  
20          representatives and 1 or more plan sponsors and  
21          ratified in a plan year with respect to which the  
22          funded target liability percentage as of the valuation  
23          date was at least 60 percent, this subsection shall  
24          not be applied to benefits pursuant to, and individ-

1 uals covered by, such agreement for plan years be-  
 2 ginning before the earlier of—

3 “(A) the date on which the last of such  
 4 collective bargaining agreements terminates (de-  
 5 termined without regard to any extension there-  
 6 of), or

7 “(B) the date which is 3 years after the  
 8 date the freeze period would otherwise begin  
 9 under this subsection.

10 “(e) DEFINITIONS AND RULES RELATING TO APPLI-  
 11 CATION OF LIMITATIONS.—For purposes of this section—

12 “(1) FUNDED TARGET LIABILITY PERCENT-  
 13 AGE.—

14 “(A) IN GENERAL.—The term ‘funded tar-  
 15 get liability percentage’ means, with respect to  
 16 any plan year, the percentage equal to a frac-  
 17 tion—

18 “(i) the numerator of which is the  
 19 value of assets of the plan determined  
 20 under section 430(g)(2) for the plan year,  
 21 and

22 “(ii) the denominator of which is the  
 23 target liability for the plan year.

24 “(B) ADJUSTED FUNDED TARGET LIABIL-  
 25 ITY PERCENTAGE.—The term ‘adjusted funded

1 target liability percentage' means the funded  
2 target liability percentage which is determined  
3 under subparagraph (A) by increasing each of  
4 the amounts under clauses (i) and (ii) of sub-  
5 paragraph (A) by the aggregate amount of pur-  
6 chases of annuities, payments of single sums,  
7 and such other disbursements as the Secretary  
8 shall prescribe in regulations, which were made  
9 by the plan during the preceding 2 plan years.

10 “(2) CERTIFICATION.—A certification by an en-  
11 rolled actuary under this section shall be made in  
12 such form and manner as the Secretary may pre-  
13 scribe and shall be based on the information avail-  
14 able to the enrolled actuary. The enrolled actuary  
15 shall notify the plan administrator of any change in  
16 the funded target liability percentage if the actual  
17 target liability or asset value differs from that used  
18 for the certification.

19 “(3) CONTRIBUTIONS INCLUDED IN ASSETS.—  
20 In making a certification under paragraph (2) for  
21 purposes of this section, the determination of wheth-  
22 er and to what extent contributions are to be taken  
23 into account in computing the assets of the plan  
24 shall be made in the same manner as under section  
25 430(g)(2)(C), except that contributions in excess of

1 the minimum required contribution for any pre-  
2 ceding plan year shall not be taken into account un-  
3 less made before the date of the certification.

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

7 “(A) OPERATION OF PLAN AFTER PE-  
8 RIOD.—Unless the plan provides otherwise, the  
9 accrual and payment of benefits which were  
10 prohibited, frozen, or eliminated under sub-  
11 section (c) or (d) shall resume, effective as of  
12 the day following the close of a prohibited or  
13 freeze period under subsection (c) or (d), which-  
14 ever is applicable.

15 “(B) TREATMENT OF AFFECTED BENE-  
16 FITS.—Nothing in this paragraph shall be con-  
17 strued as affecting the plan’s treatment of ben-  
18 efits prohibited, frozen, or eliminated during  
19 the prohibited or freeze period.

20 “(f) OTHER DEFINITIONS AND RULES.—For pur-  
21 poses of this section—

22 “(1) COORDINATION WITH MINIMUM REQUIRED  
23 CONTRIBUTIONS.—Any contribution by a plan spon-  
24 sor for a plan year shall be allocated first to any  
25 minimum required contribution under section 430

1 for any plan year the valuation date of which occurs  
2 on or before the date of the contribution by the plan  
3 sponsor until all such minimum required contribu-  
4 tions are fully made and then to the contributions  
5 required under subsection (b), (c), or (d).

6 “(2) TERMS USED IN SECTION 430.—Any term  
7 used in this section which is also used in section 430  
8 shall have the meaning given such term by section  
9 430.

10 “(3) BANKRUPTCY.—A plan sponsor is in bank-  
11 ruptcy during any period the plan sponsor is a debt-  
12 or in a case under title 11, United States Code, or  
13 similar Federal or State law.

14 “(4) PLAN SPONSOR.—The term ‘plan sponsor’  
15 means the employer referred to in section  
16 412(c)(without regard to paragraph (2)).

17 “(5) PLANS IN EXISTENCE LESS THAN 5  
18 YEARS.—This section (other than subsection (c))  
19 shall not apply to a plan for each of the plan’s first  
20 5 plan years. For purposes of this paragraph, plan  
21 years of any predecessor plan shall be taken into ac-  
22 count. Notwithstanding this paragraph, subsections  
23 (b) and (d) shall apply during any period the plan  
24 sponsor is in bankruptcy.

1           “(6) COORDINATION WITH OTHER REQUIRE-  
 2           MENTS.—A trust forming part of a plan to which  
 3           this section applies shall not be treated as failing to  
 4           constitute a qualified trust merely because the plan  
 5           does not make a payment required under the plan  
 6           because the plan is prohibited from making the pay-  
 7           ment by reason of this section.

8           “(7) YEARS BEFORE EFFECTIVE DATE.—No  
 9           plan year beginning before 2007 shall be taken into  
 10          account in determining whether this section applies  
 11          to any plan year beginning after 2006.”.

12          (b) CONFORMING AMENDMENTS.—Part III of sub-  
 13          chapter D of chapter 1 of such Code, as added by this  
 14          subtitle, is amended by striking the heading and table of  
 15          sections and inserting:

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

            “Subpart A. Minimum funding standards for pension plans.

            “Subpart B. Limitations on benefit improvements by single-employer plans.

18          **“Subpart A—Minimum Funding Standards for  
 19          Pension Plans**

            “Sec. 430. Minimum funding standards for plans other than multiem-  
             ployer plans.

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

20          (c) EFFECTIVE DATE.—

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

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

11                   (A) the later of—

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

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

22                   (B) January 1, 2009.

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

1 conform to any requirement added by this subsection  
2 shall not be treated as a termination of such collec-  
3 tive bargaining agreement.

4 **SEC. 304. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EM-**  
5 **PLOYER PLANS.**

6 (a) IN GENERAL.—Section 404 of the Internal Rev-  
7 enue Code of 1986 (relating to deduction for contributions  
8 of an employer to an employees' trust or annuity plan and  
9 compensation under a deferred payment plan) is amend-  
10 ed—

11 (1) in subsection (a)(1)(A), by inserting “in the  
12 case of a single-employer plan, in an amount deter-  
13 mined under subsection (o), and in the case of any  
14 other plan” after “section 501(a),”, and

15 (2) by inserting at the end the following new  
16 subsection:

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

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

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

4           “(B) the sum of the minimum required  
5           contributions under section 430 for such plan  
6           years.

7           “(2) DETERMINATION OF AMOUNT.—

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

11           “(i) the sum of—

12           “(I) the target liability for the  
13           plan year,

14           “(II) the target normal cost for  
15           the plan year, and

16           “(III) the cushion amount for the  
17           plan year, over

18           “(ii) the value (determined under sec-  
19           tion 430(g)(2)) of the assets of the plan  
20           which are held by the plan as of the valu-  
21           ation date for the plan year.

22           “(B) SPECIAL RULE FOR CERTAIN EM-  
23           PLOYERS.—If section 430(f) does not apply to  
24           a plan for a plan year, the amount determined

1 under subparagraph (A)(i) for the plan year  
2 shall in no event be less than the sum of—

3 “(i) the at-risk target liability for the  
4 plan year (determined as if section 430(f)  
5 applied to the plan), plus

6 “(ii) the at-risk target normal cost for  
7 the plan year (as so determined).

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

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

12 “(i) 80 percent of the target liability  
13 for the plan year, and

14 “(ii) the amount by which the target  
15 liability for the plan year would increase if  
16 the plan were to take into account—

17 “(I) increases in compensation  
18 which are expected to occur in suc-  
19 ceeding plan years, or

20 “(II) if the plan does not base  
21 benefits for service to date on com-  
22 pensation, increases in benefits which  
23 are expected to occur in succeeding  
24 plan years (determined on the basis of  
25 the average annual increase in bene-

1 fits over the 6 immediately preceding  
2 plan years).

3 “(B) LIMITATIONS.—

4 “(i) IN GENERAL.—In making the  
5 computation under subparagraph (A)(ii),  
6 the plan’s actuary shall assume that the  
7 limitations under subsections (j)(1) and (l)  
8 shall apply.

9 “(ii) EXPECTED INCREASES.—In the  
10 case of a plan year during which a plan is  
11 covered under section 4021 of the Em-  
12 ployee Retirement Income Security Act of  
13 1974, the plan’s actuary may, notwith-  
14 standing subsection (j) or (l), take into ac-  
15 count increases in the limitations which are  
16 expected to occur in succeeding plan years.

17 “(4) SPECIAL RULES FOR PLANS WITH 100 OR  
18 FEWER PARTICIPANTS.—

19 “(A) IN GENERAL.—For purposes of deter-  
20 mining the amount under paragraph (3) for any  
21 plan year, in the case of a plan which has 100  
22 or fewer participants for the plan year, the li-  
23 ability of the plan attributable to benefit in-  
24 creases for highly compensated employees (as  
25 defined in section 414(q)) resulting from a plan

1 amendment which is made or becomes effective,  
2 whichever is later, within the last 2 years shall  
3 not be taken into account in determining the  
4 target liability.

5 “(B) RULE FOR DETERMINING NUMBER  
6 OF PARTICIPANTS.—For purposes of deter-  
7 mining the number of plan participants, all de-  
8 fined benefit plans (other than multiemployer  
9 plans) maintained by the same employer (or  
10 any member of such employer’s controlled  
11 group (within the meaning of section  
12 412(g)(4))) shall be treated as one plan, but  
13 only participants with respect to such member  
14 or employer shall be taken into account.

15 “(5) SPECIAL RULE FOR TERMINATING  
16 PLANS.—In the case of a plan which, subject to sec-  
17 tion 4041 of the Employee Retirement Income Secu-  
18 rity Act of 1974, terminates during the plan year,  
19 the amount determined under paragraph (2) shall in  
20 no event be less than the amount required to make  
21 the plan sufficient for benefit liabilities (within the  
22 meaning of section 4041(d) of such Act).

23 “(6) ACTUARIAL ASSUMPTIONS.—Any computa-  
24 tion under this subsection for any plan year shall

1 use the same actuarial assumptions which are used  
2 for the plan year under section 430.

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

6 (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
7 WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
8 DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of  
9 such Code, as amended by section 323 of this Act, is  
10 amended by adding at the end the following new clause:

11 “(iv) GUARANTEED PLANS.—In apply-  
12 ing this paragraph, any single-employer  
13 plan covered under section 4021 of the  
14 Employee Retirement Income Security Act  
15 of 1974 shall not be taken into account.”.

16 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

1 (B) by striking “section 412(c)(7)” each  
2 place it appears and inserting “section  
3 431(c)(6)”,

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

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

8 (E) by striking “section 412” and insert-  
9 ing “section 431”.

10 (3) Section 404(a)(7) of such Code, as amended  
11 by this Act, is amended—

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

20 (B) by striking subparagraph (D) and in-  
21 serting:

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

1           (4) Section 404A(g)(3)(A) of such Code is  
2           amended by striking “paragraphs (3) and (7) of sec-  
3           tion 412(c)” and inserting “paragraphs (3) and (6)  
4           (without regard to subparagraph (B) thereof) of sec-  
5           tion 431(c)”.

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

9           **SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS.**

10          (a) AMENDMENTS RELATED TO QUALIFICATION RE-  
11          QUIREMENTS.—

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

14                 “(29) BENEFIT LIMITATIONS ON UNDER-  
15                 FUNDED PLANS AND PLANS MAINTAINED BY FINAN-  
16                 CIALLY WEAK EMPLOYERS.—In the case of a defined  
17                 benefit plan (other than a multiemployer plan) to  
18                 which the requirements of section 412 apply, the  
19                 trust of which the plan is a part shall not constitute  
20                 a qualified trust under this subsection unless the  
21                 plan meets the requirements of section 436.”.

22                 (2)(A) Section 401(a) of such Code, as amend-  
23                 ed by section 101 of this Act, is amended by striking  
24                 paragraphs (32) and (33) and by redesignating

1 paragraphs (34) and (35) as paragraphs (32) and  
2 (33).

3 (B)(i) Section 401(a)(28)(B)(v) of such Code,  
4 as added by section 101 of this Act, is amended by  
5 striking “paragraph (35)(E)” and inserting “para-  
6 graph (33)(E)”.

7 (ii) Section 409(h)(7) of such Code, as amended  
8 by section 101 of this Act, is amended by striking  
9 “section 401(a)(35)” and inserting “section  
10 401(a)(33)”.

11 (iii) Section 101(c)(3)(C) of this Act is amend-  
12 ed by striking “section 401(a)(35)(H)” and insert-  
13 ing “section 401(a)(33)(H)”.

14 (iv) Subsections (e) and (f) of section 4980H(e)  
15 of such Code, as added by section 102 of this Act,  
16 are each amended by striking “section 401(a)(35)”  
17 each place it appears and inserting “section  
18 401(a)(33)”.

19 (v) Section 4980I(f)(1) of such Code, as added  
20 by section 103 of this Act, is amended by striking  
21 “section 401(a)(35)(E)(iv)” and inserting “section  
22 401(a)(33)(E)(iv)”.

23 (vi) Section 4980J(e)(9)(B) of such Code, as  
24 added by section 104 of this Act, is amended by

1 striking “section 401(a)(35)(E)(iv)” and inserting  
2 “section 401(a)(33)(E)(iv)”.

3 (vii) Section 101(i)(8)(B) of the Employee Re-  
4 tirement Income Security Act of 1974, as amended  
5 by section 104 of this Act, is amended by striking  
6 “section 401(a)(35)(E)(iv)” and inserting  
7 “401(a)(33)(E)(iv)”.

8 (b) VESTING RULES.—Section 411 of such Code is  
9 amended—

10 (1) by striking “section 412(c)(8)” in sub-  
11 section (a)(3)(C) and inserting “section 412(g)(2)”,

12 (2) in subsection (b)(1)(F)—

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

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

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

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

1                   “(I) the amount determined  
2                   under section 431(c)(6)(A)(i) in the  
3                   case of a multiemployer plan (and the  
4                   sum of the target liability and target  
5                   normal cost determined under section  
6                   430 in the case of any other plan),  
7                   over”.

8           (d) SPECIAL RULES FOR MULTIEMPLOYER PLANS.—

9                   (1) Section 418(b)(2) of such Code is amend-  
10                  ed—

11                   (A) by striking “section 412(b)(2)” in sub-  
12                   paragraph (A) and inserting “section  
13                   431(b)(2)”, and

14                   (B) by striking “section 412(b)(3)(B)” in  
15                   subparagraph (B) and inserting “section  
16                   431(b)(3)(B)”.

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

18                   (A) by striking “section 412(b)(2)(A) or  
19                   (B)” in subsection (d)(1)(B) and inserting  
20                   “section 431(b)(2)(A) or (B)”,

21                   (B) by striking “section 412(c)(8)” in sub-  
22                   section (e) and inserting “section 412(g)(2)”,  
23                   and

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

1           (3) Section 418D(a)(2) of such Code is amend-  
2 ed—

3           (A) by striking “section 412(c)(8)” and in-  
4 serting “section 412(g)(2)”, and

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

7           (e) TRANSFER OF EXCESS PENSION ASSETS TO RE-  
8 TIREE HEALTH ACCOUNTS.—

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

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

13           “(A) the lesser of the amount determined  
14 under subparagraph (A) or (B) of section  
15 430(g)(2) as of the valuation date for the plan  
16 year in which the transfer occurs, over

17           “(B) 125 percent of the sum of the target  
18 liability and the target normal cost determined  
19 under section 430 for such plan year.”.

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

22           “(4) COORDINATION WITH SECTION 430.—In  
23 the case of a qualified transfer to a health benefits  
24 account, any assets transferred in a plan year on or  
25 before the valuation date for the plan year (and any

1 income allocable thereto) shall, for purposes of sec-  
2 tion 430, not be treated as assets in the plan as of  
3 the valuation date. The prefunding balance under  
4 section 430(e) for the plan year shall be reduced by  
5 the assets so transferred.”.

6 (f) EXCISE TAXES.—

7 (1) Subsections (a) and (b) of section 4971 of  
8 such Code are amended to read as follows:

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

13 “(1) in the case of a plan other than a multiem-  
14 ployer plan, 10 percent of the aggregate unpaid min-  
15 imum required contributions for all plan years re-  
16 maining unpaid as of the end of any plan year end-  
17 ing with or within the taxable year, and

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

22 “(b) ADDITIONAL TAX.—If—

23 “(1) a tax is imposed under subsection (a)(1)  
24 on any unpaid required minimum contribution and

1 such amount remains unpaid as of the close of the  
2 taxable period, or

3 “(2) a tax is imposed under subsection (a)(2)  
4 on any accumulated funding deficiency and the accu-  
5 mulated funding deficiency is not corrected within  
6 the taxable period,

7 there is hereby imposed a tax equal to 100 percent of the  
8 unpaid minimum required contribution or accumulated  
9 funding deficiency, whichever is applicable, to the extent  
10 not so paid or corrected.”.

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

12 (A) by striking “the last two sentences of  
13 section 412(a)” in paragraph (1) and inserting  
14 “section 431”, and

15 (B) by adding at the end the following new  
16 paragraph:

17 “(4) UNPAID MINIMUM REQUIRED CONTRIBU-  
18 TION.—

19 “(A) IN GENERAL.—The term ‘unpaid  
20 minimum required contribution’ means, with re-  
21 spect to any plan year, any minimum required  
22 contribution under section 430 for the plan  
23 year which is not paid on or before the due date  
24 (as determined under section 430(h)(1)) for the  
25 plan year.

1           “(B) ORDERING RULE.—Any payment to  
2           or under a plan for any plan year shall be allo-  
3           cated first to unpaid minimum required con-  
4           tributions for all preceding plan years in the  
5           order in which such contributions became due  
6           and then to the minimum required contribution  
7           under section 430 for the plan year.”.

8           (3) Section 4971(e)(1) of such Code is amended  
9           by striking “section 412(b)(3)(A)” and inserting  
10          “section 412(c)(1)”.

11          (4) Section 4971(f)(1) of such Code is amend-  
12          ed—

13                 (A) by striking “section 412(m)(5)” and  
14                 inserting “section 430(j)(5)”, and

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

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

1 (g) REPORTING REQUIREMENTS.—Section 6059(b)  
2 of such Code is amended—

3 (1) by striking “the accumulated funding defi-  
4 ciency (as defined in section 412(a))” in paragraph  
5 (2) and inserting “the unpaid minimum required  
6 contributions determined under section 430, or the  
7 accumulated funding deficiency determined under  
8 section 431,” and

9 (2) by striking paragraph (3)(B) and inserting:  
10 “(B) the requirements for reasonable actu-  
11 arial assumptions under section 430(h)(1) or  
12 431(c)(3), whichever are applicable, have been  
13 complied with.”.

14 (h) DEFINITIONS.—Section 414 of such Code (relat-  
15 ing to definitions and special rules) is amended by adding  
16 at the end the following:

17 “(w) OTHER DEFINITIONS.—For purposes of this  
18 part—

19 “(1) AFFECTED PARTY.—The term ‘affected  
20 party’ means, with respect to any plan—

21 “(A) a participant,

22 “(B) a beneficiary,

23 “(C) an alternate payee (as defined in sec-  
24 tion 414(p)(8)),

1           “(D) each employee organization rep-  
2           resenting participants in the plan, and

3           “(E) each employer with an obligation to  
4           make contributions to the plan.

5           “(2) SINGLE-EMPLOYER PLAN.—The term ‘sin-  
6           gle-employer plan’ means a defined benefit plan, or  
7           a defined contribution plan, which is not a multiem-  
8           ployer plan.”.

9           (i) EFFECTIVE DATE.—

10           (1) IN GENERAL.—Except as prescribed in  
11           paragraph (2), the amendments made by this section  
12           shall apply to plan years beginning after December  
13           31, 2006.

14           (2) EXCISE TAX.—The amendments made by  
15           subsection (f) shall apply to any taxable year with  
16           or within which a plan year beginning after Decem-  
17           ber 31, 2006, ends.

18           **PART II—AMENDMENTS TO THE EMPLOYEE**

19           **RETIREMENT INCOME SECURITY ACT OF 1974**

20           **SEC. 311. MODIFICATIONS OF THE MINIMUM FUNDING**  
21           **STANDARDS.**

22           (a) REPEAL OF EXISTING FUNDING RULES.—Sec-  
23           tions 302 through 308 of the Employee Retirement In-  
24           come Security Act of 1974 (29 U.S.C. 1082 through  
25           1086) are repealed.

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

5 “MINIMUM FUNDING STANDARDS

6 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM  
7 FUNDING STANDARD.—

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

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

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

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

1           “(C) in the case of a multiemployer plan,  
2           the employers make contributions to or under  
3           the plan for the plan year which, in the aggre-  
4           gate, are sufficient to ensure that the plan does  
5           not have an accumulated funding deficiency  
6           under section 304 as of the end of the plan  
7           year.

8           “(b) LIABILITY FOR CONTRIBUTIONS.—

9           “(1) IN GENERAL.—Except as provided in para-  
10          graph (2), the amount of any contribution required  
11          by this section and any required installments under  
12          section 303(j) shall be paid by any employer respon-  
13          sible for making the contribution to or under the  
14          plan.

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

21          “(c) VARIANCE FROM MINIMUM FUNDING STAND-  
22          ARD.—

23          “(1) WAIVER IN CASE OF BUSINESS HARD-  
24          SHIP.—

25          “(A) IN GENERAL.—If—

1           “(i) an employer is (or in the case of  
2           a multiemployer plan, 10 percent or more  
3           of the number of employers contributing to  
4           or under the plan, are) unable to satisfy  
5           the minimum funding standard for a plan  
6           year without temporary substantial busi-  
7           ness hardship (substantial business hard-  
8           ship in the case of a multiemployer plan),  
9           and

10           “(ii) application of the standard would  
11           be adverse to the interests of plan partici-  
12           pants in the aggregate,

13           the Secretary of the Treasury may, subject to  
14           subparagraphs (B) and (C), waive the require-  
15           ments of subsection (a) for such year with re-  
16           spect to all or any portion of the minimum  
17           funding standard. The Secretary of the Treas-  
18           ury shall not waive the minimum funding  
19           standard with respect to a plan for more than  
20           3 of any 15 (5 of any 15 in the case of a multi-  
21           employer plan) consecutive plan years.

22           “(B) EFFECTS OF WAIVER.—If a waiver is  
23           granted under subparagraph (A) for any plan  
24           year, in the case of—

1           “(i) a single-employer plan, the min-  
2           imum required contribution under section  
3           303 for the plan year shall be reduced by  
4           the amount of the waived funding defi-  
5           ciency and such amount shall be amortized  
6           as required under section 303(d), and

7           “(ii) a multiemployer plan, the fund-  
8           ing standard account shall be credited  
9           under section 304(b)(3)(C) with the  
10          amount of the waived funding deficiency  
11          and such amount shall be amortized as re-  
12          quired under section 304(b)(2)(C), except  
13          that the interest rate used for purposes of  
14          computing the amortization charge de-  
15          scribed in such section shall be the rate de-  
16          termined under section 6621(b) of the In-  
17          ternal Revenue Code of 1986.

18          “(C) WAIVER OF AMORTIZED PORTION  
19          NOT ALLOWED.—The Secretary of the Treasury  
20          may not waive under subparagraph (A) any  
21          portion of the minimum funding standard  
22          under subsection (a) for a plan year which is  
23          attributable to any amortization payment re-  
24          quired to be made for such plan year with re-  
25          spect to any amortization described in subpara-

1 graph (B) of any waived funding deficiency for  
2 any preceding plan year.

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

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

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

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

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

19 “(3) WAIVED FUNDING DEFICIENCY.—For pur-  
20 poses of this section, the term ‘waived funding defi-  
21 ciency’ means the portion of the minimum funding  
22 standard under subsection (a) (determined without  
23 regard to the waiver) for a plan year waived by the  
24 Secretary of the Treasury under this subsection and  
25 not satisfied by employer contributions.

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

9           “(5) SPECIAL RULE IF EMPLOYER IS MEMBER  
10          OF CONTROLLED GROUP.—In the case of a single-  
11          employer plan, if an employer is a member of a con-  
12          trolled group, the temporary substantial business  
13          hardship requirements of paragraph (1) shall be  
14          treated as met only if such requirements are met—

15                 “(A) with respect to such employer, and

16                 “(B) with respect to the controlled group  
17                 of which such employer is a member (deter-  
18                 mined by treating all members of such group as  
19                 a single employer).

20          The Secretary of the Treasury may provide that an  
21          analysis of a trade or business or industry of a mem-  
22          ber need not be conducted if the Secretary of the  
23          Treasury determines such analysis is not necessary  
24          because the taking into account of such member

1 would not significantly affect the determination  
2 under this subsection.

3 “(d) EXTENSION OF AMORTIZATION PERIODS.—In  
4 the case of a multiemployer plan, the period of years re-  
5 quired to amortize any unfunded liability (described in any  
6 clause of section 304(b)(2)(B)) of the plan may be ex-  
7 tended by the Secretary of the Treasury for a period of  
8 time (not in excess of 10 years) if the Secretary of the  
9 Treasury determines that such extension would carry out  
10 the purposes of this Act and would provide adequate pro-  
11 tection for participants under the plan and their bene-  
12 ficiaries and if the Secretary of the Treasury determines  
13 that the failure to permit such extension would—

14 “(1) result in—

15 “(A) a substantial risk to the voluntary  
16 continuation of the plan, or

17 “(B) a substantial curtailment of pension  
18 benefit levels or employee compensation, and

19 “(2) be adverse to the interests of plan partici-  
20 pants in the aggregate.

21 The interest rate applicable for any plan year under any  
22 arrangement entered into by the Secretary of the Treasury  
23 in connection with an extension granted under this sub-  
24 section shall be the rate determined under section 6621(b)  
25 of the Internal Revenue Code of 1986.

1       “(e) REQUIREMENTS RELATING TO WAIVERS AND  
2 EXTENSIONS.—

3               “(1) BENEFITS MAY NOT BE INCREASED DUR-  
4       ING WAIVER OR EXTENSION PERIOD.—If—

5                       “(A) a waiver under subsection (c)(1) or  
6       an extension of time under subsection (d) is in  
7       effect with respect to the plan, or

8                       “(B) a plan amendment described in sub-  
9       section (f)(2) which reduces the accrued benefit  
10       of any participant has been made at any time  
11       in the preceding 12 months (24 months for  
12       multiemployer plans),

13       no applicable benefit increase shall take effect. If an  
14       applicable benefit increase takes effect in violation of  
15       the preceding sentence, any such waiver or extension  
16       of time shall not apply to any plan year ending on  
17       or after the date on which such increase takes effect.

18               “(2) EXCEPTION.—Paragraph (1) shall not  
19       apply to any applicable benefit increase pursuant to  
20       a plan amendment which—

21                       “(A) the Secretary of the Treasury deter-  
22       mines to be reasonable and which provides for  
23       only de minimis increases in the liabilities of  
24       the plan,

1           “(B) only repeals an amendment described  
2           in subsection (f)(2) which reduced the accrued  
3           benefit of any participant, or

4           “(C) is required as a condition of qualifica-  
5           tion under part I of subchapter D of chapter 1  
6           of the Internal Revenue Code of 1986.

7           “(3) APPLICABLE BENEFIT INCREASE.—The  
8           term ‘applicable benefit increase’ has the meaning  
9           given such term by section 305(b)(3) without regard  
10          to subparagraph (B) or (C) thereof.

11          “(4) SECURITY FOR WAIVERS; CONSULTA-  
12          TIONS.—

13                 “(A) SECURITY MAY BE REQUIRED.—

14                         “(i) IN GENERAL.—Except as pro-  
15                         vided in subparagraph (C), the Secretary  
16                         of the Treasury may require an employer  
17                         maintaining a defined benefit plan which is  
18                         a single-employer plan to provide security  
19                         to such plan as a condition for granting or  
20                         modifying a waiver under subsection (c).

21                         “(ii) SPECIAL RULES.—Any security  
22                         provided under clause (i) may be perfected  
23                         and enforced only by—

24   “(I) the Pension Benefit Guar-  
25   anty Corporation, or

1           “(II) at the direction of the Cor-  
2           poration, by a contributing sponsor  
3           (within the meaning of section  
4           4001(a)(13)) or a member of such  
5           sponsor’s controlled group (within the  
6           meaning of section 4001(a)(14)).

7           “(B) CONSULTATION WITH THE PENSION  
8           BENEFIT GUARANTY CORPORATION.—Except as  
9           provided in subparagraph (C), the Secretary of  
10          the Treasury shall, before granting or modi-  
11          fying a waiver under subsection (c) with respect  
12          to a plan described in subparagraph (A)(i)—

13                 “(i) provide the Pension Benefit  
14                 Guaranty Corporation with—

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

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

21                         “(ii) consider—

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

24                                 “(II) any views of any employee  
25                                 organization (within the meaning of

1 section 3(4)) representing participants  
2 in the plan which are submitted in  
3 writing to the Secretary of the Treas-  
4 ury in connection with such applica-  
5 tion.

6 Information provided to the Corporation  
7 under this subparagraph shall be consid-  
8 ered tax return information and subject to  
9 the safeguarding and reporting require-  
10 ments of section 6103(p) of the Internal  
11 Revenue Code of 1986.

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

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

18 “(I) the aggregate unpaid min-  
19 imum required contributions (within  
20 the meaning of section 4971 of the  
21 Internal Revenue Code of 1986) for  
22 the plan year and all preceding plan  
23 years, and

24 “(II) the present value of all  
25 waiver amortization payments under

1 section 303(d) determined for the  
2 plan year and all succeeding plan  
3 years,

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

5 “(ii) TREATMENT OF PENDING WAIV-  
6 ERS.—For purposes of clause (i)(I), min-  
7 imum required contributions shall include  
8 any increase in such amount which would  
9 result if all applications for waivers of the  
10 minimum funding standard under sub-  
11 section (c) or section 412(d) of the Inter-  
12 nal Revenue Code of 1986 which are pend-  
13 ing with respect to such plan were denied.

14 “(5) ADDITIONAL REQUIREMENTS.—

15 “(A) ADVANCE NOTICE.—The Secretary of  
16 the Treasury shall, before granting a waiver  
17 under subsection (c) or an extension under sub-  
18 section (d), require each applicant to provide  
19 evidence satisfactory to the Secretary of the  
20 Treasury that the applicant has provided notice  
21 of the filing of the application for such waiver  
22 or extension to each affected party (as defined  
23 in section 4001(a)(21)) other than the Corpora-  
24 tion, and each employer with an obligation to  
25 make contributions to the affected plan. Such

1 notice shall include a description of the extent  
2 to which the plan is funded for benefits which  
3 are guaranteed under title IV and for benefit li-  
4 abilities (within the meaning of section  
5 4041(d)).

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

11 “(f) OTHER DEFINITIONS AND RULES.—For pur-  
12 poses of this section—

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

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 2 and one-half months  
22 after the close of the plan year (or, in the case  
23 of a multiemployer plan, no later than 2 years  
24 after the close of such plan year),

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

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

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



1 purposes of this section and section 302, be equal to  
2 the sum of—

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

5 “(B) the aggregate amortization payment  
6 (if any) for the plan year, and

7 “(C) the waiver amortization payment (if  
8 any) for the plan year.

9 In no event shall the sum of the amounts deter-  
10 mined under subparagraphs (B) and (C) for any  
11 plan year exceed the unfunded target liability for the  
12 plan year.

13 “(2) LIMITATION ON ANNUAL INCREASES OR  
14 DECREASES.—

15 “(A) IN GENERAL.—Except as provided in  
16 subparagraph (B), the minimum required con-  
17 tribution for any plan year beginning after  
18 2007—

19 “(i) shall not exceed the minimum re-  
20 quired contribution for the preceding plan  
21 year (determined after application of this  
22 paragraph and without regard to any ad-  
23 justment under subsection (i)(2)), in-  
24 creased by the greater of—

1                   “(I) 30 percent of the target nor-  
2                   mal cost of the plan for the preceding  
3                   plan year, or

4                   “(II) 2 percent of the target li-  
5                   ability of the plan for the preceding  
6                   plan year, and

7                   “(ii) shall not be less than such min-  
8                   imum required contribution for the pre-  
9                   ceding plan year, reduced by the greater of  
10                  the amounts under subclause (I) or (II) of  
11                  clause (i).

12                  “(B) SPECIAL RULES FOR BENEFIT IN-  
13                  CREASES OR DECREASES DURING PLAN YEAR.—  
14                  If an applicable benefit increase (as defined in  
15                  section 305(b)(3) without regard to subpara-  
16                  graph (B) or (C) thereof) takes effect during  
17                  the current plan year—

18                         “(i) the minimum required contribu-  
19                         tion for the current plan year for purposes  
20                         of applying subparagraph (A) shall be de-  
21                         termined without regard to any increase in  
22                         such contribution attributable to the appli-  
23                         cable benefit increase, and

24                         “(ii) the amount determined under  
25                         subparagraph (A) (after application of

1            clause (i)) shall be increased by the  
2            amount of the increase in the minimum re-  
3            quired contribution disregarded under  
4            clause (i).

5            A similar rule shall apply in the case of any  
6            benefit decrease which takes effect during the  
7            current plan year.

8            “(C) SPECIAL RULES RELATING TO PRE-  
9            CEDING YEAR.—For purposes of subparagraph  
10           (A)—

11                    “(i) all target liability amortization in-  
12                    stallments and waiver amortization install-  
13                    ments under subsections (c) and (d) which  
14                    were determined with respect to any amor-  
15                    tizable target liability or waived funding  
16                    deficiency which is fully amortized as of  
17                    the close of the preceding plan year shall  
18                    not be taken into account in determining  
19                    the minimum required contribution for the  
20                    preceding plan year, and

21                    “(ii) if paragraph (3) applied for the  
22                    preceding plan year, the minimum required  
23                    contribution for the preceding plan year  
24                    shall be treated as being equal to the tar-  
25                    get normal cost for such year.

1           “(3) SPECIAL RULES FOR PLANS WHERE AS-  
2           SETS EXCEED TARGET LIABILITY.—If, as of the  
3           valuation date for any plan year, the value of the as-  
4           sets of the plan (reduced as provided in subsection  
5           (e)(3)) equals or exceeds the target liability for the  
6           plan year (in this subsection referred to as the ‘cur-  
7           rent plan year’)—

8                   “(A) the minimum required contribution  
9                   for the current plan year shall be equal to tar-  
10                  get normal cost, reduced (but not below zero)  
11                  by the amount of any such excess, and

12                   “(B) all target liability amortization in-  
13                  stallments and waiver amortization installments  
14                  under subsections (c) and (d) which were deter-  
15                  mined with respect to any amortizable target li-  
16                  ability or waived funding deficiency for the cur-  
17                  rent plan year or any preceding plan year shall  
18                  not be taken into account for any succeeding  
19                  plan year.

20           “(b) TARGET NORMAL COST.—For purposes of this  
21           section—

22                   “(1) IN GENERAL.—The term ‘target normal  
23                  cost’ means, with respect to any plan year, the  
24                  present value of all benefits which accrue or are  
25                  earned under the plan during the plan year. If any

1 benefit attributable to services performed in a pre-  
2 ceding plan year is increased by reason of any in-  
3 crease in compensation during the current plan year,  
4 the increase shall be treated as accruing during the  
5 current plan year.

6 “(2) FINANCIALLY-WEAK EMPLOYERS.—If a  
7 plan sponsor of a plan for any plan year is a finan-  
8 cially-weak employer for any plan year, the target  
9 normal cost of the plan for the plan year shall be  
10 the at-risk target normal cost determined under sub-  
11 section (f).

12 “(c) DEFINITIONS AND RULES RELATING TO TAR-  
13 GET LIABILITY.—For purposes of this section—

14 “(1) TARGET LIABILITY.—

15 “(A) IN GENERAL.—The term ‘target li-  
16 ability’ means, with respect to any plan year,  
17 the present value of all benefits accrued or  
18 earned under the plan as of the beginning of  
19 the plan year.

20 “(B) FINANCIALLY-WEAK EMPLOYERS.—If  
21 a plan sponsor of a plan for any plan year is  
22 a financially-weak employer for any plan year,  
23 the target liability of the plan for the plan year  
24 shall be the at-risk target liability determined  
25 under subsection (f).

1           “(2) UNFUNDED TARGET LIABILITY.—The  
2 term ‘unfunded target liability’ means, with respect  
3 to any plan year, the excess (if any) of—

4                   “(A) the target liability for the plan year,  
5 over

6                   “(B) the value of the assets of the plan  
7 (reduced as provided under subsection (e)(3))  
8 as of the valuation date.

9           “(3) AGGREGATE AMORTIZATION PAYMENTS.—  
10 For purposes of this section—

11                   “(A) AGGREGATE AMORTIZATION PAY-  
12 MENT.—The aggregate amortization payment  
13 for any plan year is the aggregate amount of  
14 the target liability amortization installments de-  
15 termined for the plan year with respect to any  
16 amortizable target liability for the plan year  
17 and each of the 6 preceding plan years.

18                   “(B) AMORTIZABLE TARGET LIABILITY.—

19                           “(i) IN GENERAL.—The term ‘amor-  
20 tizable target liability’ means, with respect  
21 to any plan year, the amount (if any) by  
22 which the unfunded target liability for the  
23 current plan year is more or less than the  
24 amount determined under clause (ii).

1           “(ii) AMOUNTS PREVIOUSLY AC-  
2           COUNTED FOR.—The amount determined  
3           under this clause is the present value of all  
4           target liability amortization installments  
5           and waiver amortization installments under  
6           this subsection and subsection (d) which  
7           were determined for the current plan year  
8           or any succeeding plan year with respect to  
9           any amortizable target liability or waived  
10          funding deficiency for any plan year pre-  
11          ceding the current plan year.

12          “(C) TARGET LIABILITY AMORTIZATION  
13          INSTALLMENTS.—If a plan has an amortizable  
14          target liability for any plan year—

15                 “(i) the liability shall be amortized in  
16                 7 level amortization amounts over the 7-  
17                 plan year period beginning with the plan  
18                 year, and

19                 “(ii) the target liability amortization  
20                 installment with respect to the liability for  
21                 each of the 7 plan years shall be the fixed  
22                 amount necessary to amortize the liability  
23                 as provided under clause (i).

24          “(D) COMPUTATION ASSUMPTIONS.—In  
25          determining the present value of any amortiza-

1           tion installment under subparagraph (B)(ii), or  
2           the amount of any amortization installment  
3           under subparagraph (C), the following rules  
4           shall apply:

5                   “(i) Each amortization installment  
6                   shall be treated as made on the valuation  
7                   date for the plan year for which the install-  
8                   ment is determined.

9                   “(ii) The interest rates used shall be  
10                  the interest rates determined under the  
11                  yield curve method under subsection  
12                  (h)(2)(B) for the current plan year.

13           “(4) TRANSITION RULE FOR AMORTIZATION OF  
14           UNFUNDED TARGET LIABILITY.—

15                   “(A) IN GENERAL.—Solely for purposes of  
16                   applying paragraph (3) in the case of plan  
17                   years beginning after 2006 and before 2011,  
18                   only the applicable percentage of target liability  
19                   shall be taken into account under paragraph  
20                   (2)(A) in determining unfunded target liability  
21                   for the plan year.

22                   “(B) APPLICABLE PERCENTAGE.—For  
23                   purposes of subparagraph (A)—

24                           “(i) IN GENERAL.—Except as pro-  
25                           vided in clause (ii), the applicable percent-

1 age shall be 93 percent for plan years be-  
 2 ginning in 2007, 96 percent for plan years  
 3 beginning in 2008, and 100 percent for  
 4 any succeeding plan year.

5 “(ii) SMALL PLANS.—In the case of a  
 6 plan described in subsection (g)(1)(B)(ii),  
 7 the applicable percentage shall be deter-  
 8 mined in accordance with the following  
 9 table:

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

10 “(d) AMORTIZATION OF WAIVED FUNDING DEFI-  
 11 CIENCY.—For purposes of this section—

12 “(1) IN GENERAL.—The waiver amortization  
 13 payment for any plan year is the aggregate amount  
 14 of the waiver amortization installments determined  
 15 for the plan year with respect to any waived funding  
 16 deficiency for each of the 5 preceding plan years.

17 “(2) WAIVER AMORTIZATION INSTALLMENTS.—  
 18 If a plan has a waived funding deficiency for any  
 19 plan year—

20 “(A) the deficiency shall be amortized in 5  
 21 level amortization amounts over the 5-plan year

1 period beginning with the succeeding plan year,  
2 and

3 “(B) the waiver amortization installment  
4 with respect to the deficiency for each of the 5  
5 plan years shall be the fixed amount necessary  
6 to amortize the deficiency as provided under  
7 subparagraph (A).

8 “(3) COMPUTATION ASSUMPTIONS.—In making  
9 any determination under paragraph (2) with respect  
10 to the amount of any amortization installment, the  
11 following rules shall apply:

12 “(A) Each amortization installment will be  
13 treated as made on the valuation date for the  
14 plan year for which the installment is deter-  
15 mined.

16 “(B) The interest rates used shall be the  
17 interest rates determined under the yield curve  
18 method under subsection (h)(2)(B) for the plan  
19 year in which the waived funding deficiency to  
20 which the installment relates arose.

21 “(4) WAIVED FUNDING DEFICIENCY.—The  
22 waived funding deficiency of a plan for any plan  
23 year is the amount of any waived funding deficiency  
24 for the plan year under section 302(c).

1       “(e) USE OF PREFUNDING BALANCES TO SATISFY  
2 MINIMUM REQUIRED CONTRIBUTIONS.—

3           “(1) IN GENERAL.—A plan sponsor may credit  
4 any amount of a plan’s prefunding balance for a  
5 plan year against the minimum required contribu-  
6 tion for the plan year and the amount of the con-  
7 tributions an employer is required to make under  
8 section 302 for the plan year shall be reduced by the  
9 amount so credited. Any such amount shall be cred-  
10 ited on the first day of the plan year.

11           “(2) PREFUNDING BALANCE.—

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

22           “(B) INCREASES.—

23           “(i) IN GENERAL.—As of the first day  
24 of each plan year beginning after 2007, the

1           prefunding balance of a plan shall be in-  
2           creased by the excess (if any) of—

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

6                   “(II) the minimum required con-  
7                   tribution for the preceding plan year.

8                   “(ii) ADJUSTMENTS FOR INTEREST.—  
9                   Any excess contributions under clause (i)  
10                  shall be properly adjusted for interest ac-  
11                  cruing for the periods between the first  
12                  day of the current plan year and the dates  
13                  on which the excess contributions were  
14                  made, determined by using the applicable  
15                  effective interest rate (as defined in sub-  
16                  section (g)(3)) for the preceding plan year  
17                  and by treating contributions as being first  
18                  used to satisfy the minimum required con-  
19                  tribution.

20                  “(iii) CERTAIN CONTRIBUTIONS DIS-  
21                  REGARDED.—Any contribution which is re-  
22                  quired to be made under section 305 in ad-  
23                  dition to any contribution required under  
24                  this section shall not be taken into account  
25                  for purposes of clause (i).

1           “(C) DECREASES.—As of the first day of  
2 each plan year after 2007, the prefunding bal-  
3 ance of a plan shall be decreased (but not below  
4 zero) by the amount of the balance credited  
5 under paragraph (1) against the minimum re-  
6 quired contribution of the plan for the pre-  
7 ceding plan year.

8           “(D) ADJUSTMENTS FOR INVESTMENT EX-  
9 PERIENCE.—In determining the prefunding bal-  
10 ance of a plan as of the first day of the plan  
11 year, the plan sponsor shall, in accordance with  
12 regulations prescribed by the Secretary, adjust  
13 such balance to reflect the rate of net gain or  
14 loss with respect to plan assets for the pre-  
15 ceding plan year. Notwithstanding subsection  
16 (g)(2)(B), such rate of net gain or loss shall be  
17 determined on the basis of fair market value  
18 and shall properly take into account, in accord-  
19 ance with such regulations, all contributions,  
20 distributions, and other plan payments made  
21 during such period.

22           “(3) REDUCTION IN VALUE OF ASSETS.—Solely  
23 for purposes of applying subsections (a)(3) and  
24 (c)(2) in determining the minimum required con-  
25 tribution under this section, the value of the plan as-

1 sets otherwise determined under subsection (g)(2)  
2 shall be reduced by the amount of the prefunding  
3 balance under this subsection.

4 “(f) SPECIAL RULES FOR LARGE PLANS MAIN-  
5 TAINED BY FINANCIALLY-WEAK EMPLOYERS.—

6 “(1) DETERMINATION OF TARGET LIABILITY  
7 AND NORMAL COST.—

8 “(A) IN GENERAL.—If, as of the valuation  
9 date for any plan year, any plan sponsor of a  
10 plan to which this section applies is a finan-  
11 cially-weak employer, then, in applying this sec-  
12 tion for the plan year, the at-risk target liability  
13 and at-risk target normal cost shall (if greater)  
14 be substituted for the target liability and target  
15 normal cost, respectively. Such substitution  
16 shall not be applied for any plan year for which  
17 the plan has no unfunded target liability (deter-  
18 mined without regard to this subsection or any  
19 reduction in the value of assets under sub-  
20 section (e)(3)).

21 “(B) EXCEPTION FOR SMALL PLANS.—  
22 This subsection shall not apply to a plan for a  
23 plan year if the plan was described in sub-  
24 section (g)(1)(B)(ii) for the preceding plan  
25 year, determined by substituting ‘500’ for ‘100’.

1           “(C) EXCEPTION FOR PLANS MAINTAINED  
2 BY CERTAIN COOPERATIVES.—This subsection  
3 shall not apply to a plan for a plan year if the  
4 plan is maintained by more than 1 employer  
5 and at least 85 percent of the employers are—

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

10           “(ii) organizations described in section  
11 1381(a) of such Code more than 50 per-  
12 cent of the ownership or capital and profits  
13 interests of which are held—

14           “(I) by producers of agricultural  
15 products, or

16           “(II) organizations described in  
17 section 1381(a) of such Code meeting  
18 the requirements of subclause (I).

19           “(D) PLANS LOSING EXEMPTION.—If sub-  
20 paragraph (B) or (C) does not apply to a plan  
21 year but did apply for the preceding plan year,  
22 no plan year preceding the current plan year  
23 shall be taken into account for purposes of  
24 paragraph (3) or (4)(A).

25           “(2) AT-RISK AMOUNTS.—

1           “(A) IN GENERAL.—Except as provided in  
2 paragraph (3), the at-risk target liability and  
3 at-risk target normal cost shall be determined  
4 in the same manner as the target liability and  
5 target normal cost, except that the actuarial as-  
6 sumptions described in subparagraph (B) shall  
7 be used in computing such amounts.

8           “(B) ACTUARIAL ASSUMPTIONS.—The ac-  
9 tuarial assumptions described in this subpara-  
10 graph are as follows:

11           “(i) All employees who are not other-  
12 wise assumed to retire as of the valuation  
13 date shall be assumed to retire at the ear-  
14 liest retirement age under the plan but not  
15 before the end of the plan year for which  
16 the at-risk target liability and at-risk tar-  
17 get normal cost are being determined.

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

24           “(3) PLAN SPONSORS FINANCIALLY WEAK FOR  
25 LESS THAN 5 YEARS.—

1           “(A) IN GENERAL.—If a plan sponsor to  
 2           which this subsection applies for any plan year  
 3           was not a financially-weak employer on the  
 4           valuation date for each of the 4 immediately  
 5           preceding plan years, the at-risk target liability  
 6           or at-risk target normal cost shall be equal to  
 7           the sum of—

8                       “(i) the applicable percentage of the  
 9                       at-risk target liability or the at-risk target  
 10                      normal cost, whichever is applicable, deter-  
 11                      mined under this subsection (without re-  
 12                      gard to this paragraph), and

13                     “(ii) the product of the target liability  
 14                     or the target normal cost, whichever is ap-  
 15                     plicable, determined without regard to this  
 16                     subsection, and a percentage equal to 100  
 17                     percent minus the applicable percentage.

18           “(B) APPLICABLE PERCENTAGE.—For  
 19           purposes of subparagraph (A), the applicable  
 20           percentage shall be determined in accordance  
 21           with the following table:

<b>“If the consecutive number of years (including the plan year) the plan sponsor is financially weak is—</b>	<b>The applicable percentage is—</b>
1 .....	20
2 .....	40
3 .....	60
4 .....	80.

1 “(4) FINANCIALLY-WEAK EMPLOYER.—

2 “(A) IN GENERAL.—For purposes of this  
3 subsection, the term ‘financially-weak employer’  
4 means any employer if, as of the valuation date  
5 for each of the 3 consecutive plan years ending  
6 with the plan year—

7 “(i) the employer has an outstanding  
8 senior unsecured debt instrument which is  
9 rated lower than investment grade by each  
10 of the nationally recognized statistical rat-  
11 ing organizations for corporate bonds that  
12 has issued a credit rating for such instru-  
13 ment, or

14 “(ii) if no such debt instrument has  
15 been rated by such an organization but 1  
16 or more of such organizations has made an  
17 issuer credit rating for such employer, all  
18 such organizations which have so rated the  
19 employer have rated such employer lower  
20 than investment grade.

21 “(B) CONTROLLED GROUP EXCEPTION.—

22 If an employer treated as a financially-weak  
23 employer under subparagraph (A) is a member  
24 of a controlled group (as defined in section  
25 302(f)(3)), the employer shall not be treated as

1 a financially-weak employer if a significant  
2 member (as determined under regulations pre-  
3 scribed by the Secretary of the Treasury) of  
4 such group has an outstanding senior unse-  
5 cured debt instrument that is rated as being in-  
6 vestment grade by an organization described in  
7 subparagraph (A).

8 “(C) EMPLOYERS WITH NO RATINGS.—

9 If—

10 “(i) an employer has no debt instru-  
11 ment described in subparagraph (A)(i)  
12 which was rated by an organization de-  
13 scribed in such subparagraph, and

14 “(ii) no such organization has made  
15 an issuer credit rating for such employer,  
16 then such employer shall only be treated as a  
17 financially-weak employer to the extent provided  
18 in regulations prescribed by the Secretary of  
19 the Treasury. Such regulations shall also pro-  
20 vide for the application of paragraph (5) in the  
21 case of employers treated as financially weak  
22 under such regulations.

23 “(5) DETERMINATION OF CONSECUTIVE PERI-  
24 ODS WHERE EMPLOYER IS FINANCIALLY WEAK.—

1           “(A) RATINGS OF INVESTMENT GRADE OR  
2           HIGHER.—If, as of the valuation date for any  
3           plan year, any rating described in clause (i) or  
4           (ii) of paragraph (4)(A) is investment grade or  
5           higher—

6                   “(i) this subsection shall not apply for  
7                   the plan year, and

8                   “(ii) in applying this subsection for  
9                   any succeeding plan year, the plan year de-  
10                  scribed in clause (i) and any preceding  
11                  plan year shall not be taken into account  
12                  in determining any consecutive period of  
13                  plan years under paragraphs (3) and  
14                  (4)(A).

15           “(B) IMPROVEMENT YEARS NOT TAKEN  
16           INTO ACCOUNT.—

17                   “(i) IN GENERAL.—An improvement  
18                   year shall not be taken into account in de-  
19                   termining any consecutive period of plan  
20                   years for purposes of paragraphs (3) and  
21                   (4)(A).

22                   “(ii) APPLICATION OF SUBSECTION  
23                   AFTER IMPROVEMENT YEAR ENDS.—Plan  
24                   years immediately before and after an im-  
25                   provement year (or consecutive period of

1 improvement years) shall be treated as  
2 consecutive for purposes of paragraphs (3)  
3 and (4)(A).

4 “(iii) IMPROVEMENT YEAR.—For pur-  
5 poses of this subparagraph, the term ‘im-  
6 provement year’ means any plan year for  
7 which any rating described in clause (i) or  
8 (ii) of paragraph (4)(A) is higher than  
9 such rating for the preceding plan year.

10 “(6) YEARS BEFORE EFFECTIVE DATE.—For  
11 purposes of paragraphs (3) and (4), plan years be-  
12 ginning before 2007 shall not be taken into account.

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

15 “(1) TIME FOR MAKING DETERMINATIONS.—

16 “(A) IN GENERAL.—Except as otherwise  
17 provided in this section, all determinations  
18 under this section for a plan year shall be made  
19 as of the valuation date of the plan for the plan  
20 year.

21 “(B) VALUATION DATE.—

22 “(i) IN GENERAL.—Except as pro-  
23 vided in clause (ii), the valuation date is  
24 the first day of the plan year.

1                   “(ii)   EXCEPTION   FOR   SMALL  
2                   PLANS.—If, on each day during the pre-  
3                   ceding plan year, a plan had 100 or fewer  
4                   participants, a plan may designate any day  
5                   during the plan year as its valuation date  
6                   for the plan year and succeeding plan  
7                   years. For purposes of this clause, all de-  
8                   fined benefit plans (other than multiem-  
9                   ployer plans) maintained by the same em-  
10                  ployer (or any member of such employer’s  
11                  controlled group (as defined in section  
12                  302(f)(3))) shall be treated as 1 plan, but  
13                  only participants with respect to such em-  
14                  ployer or member shall be taken into ac-  
15                  count.

16                  “(iii)   APPLICATION   OF   CERTAIN  
17                  RULES   IN   DETERMINATION   OF   PLAN  
18                  SIZE.—

19                         “(I)   PLANS   NOT   IN   EXISTENCE  
20                         IN   PRECEDING   YEAR.—In the case of  
21                         the first plan year of any plan, clause  
22                         (ii) shall apply to such plan by taking  
23                         into account the number of partici-  
24                         pants the plan is reasonably expected

1 to have on days during such first plan  
2 year.

3 “(II) PREDECESSORS.—Any ref-  
4 erence in clause (ii) to an employer  
5 shall include a reference to any prede-  
6 cessor of such employer.

7 “(2) DETERMINATION OF VALUE OF PLAN AS-  
8 SETS.—For purposes of this section—

9 “(A) IN GENERAL.—The value of plan as-  
10 sets shall be the fair market value of the assets.

11 “(B) AVERAGING ALLOWED.—A plan may  
12 determine the value of plan assets on the basis  
13 of any reasonable actuarial method of valuation  
14 providing for the averaging of fair market val-  
15 ues, but only if such method—

16 “(i) is permitted under regulations  
17 prescribed by the Secretary of the Treas-  
18 ury, and

19 “(ii) does not provide for averaging of  
20 such values over more than the period be-  
21 ginning on the last day of the 4th month  
22 preceding the valuation date and ending on  
23 the valuation date (or a similar period in  
24 the case of a valuation date which is not  
25 the 1st day of a month).

1           “(C) ACCOUNTING FOR CONTRIBUTION RE-  
2           CEIPTS.—For purposes of determining the  
3           value of assets under this paragraph—

4                   “(i) PRIOR YEAR CONTRIBUTIONS.—  
5           If—

6                           “(I) an employer makes any con-  
7                           tribution to the plan after the valu-  
8                           ation date for the plan year in which  
9                           the contribution is made, and

10                           “(II) the contribution is for a  
11                           preceding plan year,

12                           the contribution shall be taken into ac-  
13                           count as an asset of the plan as of the  
14                           valuation date, except that in the case of  
15                           any plan year beginning after 2007, only  
16                           the present value (determined as of the  
17                           valuation date) of such contribution may  
18                           be taken into account. For purposes of the  
19                           preceding sentence, present value shall be  
20                           determined using the applicable effective  
21                           interest rate for the preceding plan year to  
22                           which the contribution is properly allo-  
23                           cable.

24                           “(ii) SPECIAL RULE FOR CURRENT  
25                           YEAR CONTRIBUTIONS MADE BEFORE

1 VALUATION DATE.—If any contributions  
2 for any plan year are made to or under the  
3 plan during the plan year but before the  
4 valuation date for the plan year, the assets  
5 of the plan as of the valuation date shall  
6 not include—

7 “(I) such contributions, and

8 “(II) interest on such contribu-  
9 tions for the period between the date  
10 of the contributions and the valuation  
11 date, determined by using the applica-  
12 ble effective interest rate for the plan  
13 year.

14 “(3) APPLICABLE EFFECTIVE INTEREST  
15 RATE.—For purposes of this section, the term ‘ap-  
16 plicable effective interest rate’ means, with respect  
17 to any plan year, the single rate of interest which,  
18 if used to determine the present value of benefits  
19 earned or accrued under the plan as of the begin-  
20 ning of the plan year, would result in an amount  
21 equal to the target liability for the plan year.

22 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—  
23 For purposes of this section—

24 “(1) ACTUARIAL ASSUMPTIONS.—Subject to  
25 this subsection, the determination of any present

1 value or other computation under this section shall  
2 be made on the basis of actuarial assumptions and  
3 methods—

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

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

10 “(2) INTEREST RATE ASSUMPTIONS USED.—

11 “(A) IN GENERAL.—Except as provided in  
12 this section, the determination of present value  
13 or other computation requiring any interest rate  
14 assumption shall be made—

15 “(i) in the case of plan years begin-  
16 ning in 2007 or 2008, by using the phase-  
17 in yield curve method (as defined in sub-  
18 paragraph (C)), and

19 “(ii) in the case of plan years begin-  
20 ning after 2008, by using the yield curve  
21 method (as defined in subparagraph (B)).

22 “(B) YIELD CURVE METHOD.—For pur-  
23 poses of this paragraph—

24 “(i) IN GENERAL.—The yield curve  
25 method is a method under which present

1 value or other amounts requiring interest  
2 rate assumptions are determined—

3 “(I) by using interest rates  
4 drawn from a yield curve which is pre-  
5 scribed by the Secretary of the Treas-  
6 ury and which reflects the yield on  
7 high-quality corporate bonds with  
8 varying maturities, and

9 “(II) by matching the timing of  
10 the expected benefit payments under  
11 the plan to the interest rates on such  
12 yield curve.

13 “(ii) PUBLICATION.—Each month the  
14 Secretary of the Treasury shall publish any  
15 yield curve prescribed under this subpara-  
16 graph which shall apply to plan years be-  
17 ginning in such month and such yield  
18 curve shall be based on average interest  
19 rates for business days occurring during  
20 the 3 preceding months.

21 “(C) PHASE-IN YIELD CURVE METHOD.—

22 “(i) IN GENERAL.—Present value or  
23 any other amount requiring the use of in-  
24 terest rate assumptions determined under

1 the phase-in yield curve method shall be  
2 equal to the sum of—

3 “(I) the applicable percentage of  
4 such amount determined under the  
5 yield curve method described in sub-  
6 paragraph (B), and

7 “(II) the product of such amount  
8 determined by using the interest rate  
9 rules in effect under section 302(b)(5)  
10 for plan years beginning in 2006 and  
11 a percentage equal to 100 percent  
12 minus the applicable percentage.

13 “(ii) APPLICABLE PERCENTAGE.—For  
14 purposes of clause (i), the applicable per-  
15 centage is 33 percent for plan years begin-  
16 ning in 2007 and 67 percent for plan years  
17 beginning in 2008.

18 “(3) MORTALITY TABLE USED.—

19 “(A) SECRETARIAL AUTHORITY.—The Sec-  
20 retary of the Treasury shall by regulation pre-  
21 scribe mortality tables to be used under this  
22 subsection. Such tables shall be based upon the  
23 actual experience of pension plans and projected  
24 trends in such experience. In prescribing such  
25 tables, the Secretary of the Treasury shall take

1 into account results of available independent  
2 studies of mortality of individuals covered by  
3 pension plans.

4 “(B) SEPARATE MORTALITY TABLES FOR  
5 THE DISABLED.—Notwithstanding subpara-  
6 graph (A)—

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

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

1 of title II of the Social Security Act and  
2 the regulations thereunder.

3 “(C) PERIODIC REVIEW.—The Secretary of  
4 the Treasury shall periodically (at least every 5  
5 years) review any tables in effect under this  
6 paragraph and shall, to the extent the Secretary  
7 of the Treasury determines necessary, update  
8 the tables to reflect the actual experience of  
9 pension plans and projected trends in such ex-  
10 perience.

11 “(4) TREATMENT OF OPTIONAL FORMS OF  
12 BENEFITS.—For purposes of determining any  
13 present value or making any computation under this  
14 section, there shall be taken into account—

15 “(A) the probability that future payments  
16 will be made in an optional form of benefit pro-  
17 vided under the plan (including lump sum pay-  
18 ments), and

19 “(B) any differences between the present  
20 value of any such optional form of benefit and  
21 the present value of the future payments used  
22 in computing target normal costs and target li-  
23 ability under this section.

24 “(5) APPROVAL REQUIRED FOR CERTAIN  
25 CHANGES IN ASSUMPTIONS BY CERTAIN PLANS.—

1           “(A) IN GENERAL.—No actuarial assump-  
2           tion used to determine the target liability for a  
3           plan to which this paragraph applies may be  
4           changed without the approval of the Secretary  
5           of the Treasury. The preceding sentence shall  
6           not apply to changes required under paragraph  
7           (2) or (3) with respect to any assumption.

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

11                 “(i) the plan is a defined benefit plan  
12                 to which title IV applies;

13                 “(ii) the aggregate unfunded target li-  
14                 abilities as of the close of the preceding  
15                 plan year of—

16                         “(I) such plan, and

17                         “(II) all other plans to which  
18                         title IV applies maintained by persons  
19                         which are liable for payment of con-  
20                         tributions to such plan under section  
21                         302(b),

22                         exceed \$50,000,000; and

23                         “(iii) the change in assumptions (de-  
24                         termined after taking into account any  
25                         changes as a result of the application of

1 paragraphs (2) and (3)) results in a de-  
2 crease in the unfunded target liability of  
3 the plan for the current plan year which—

4 “(I) exceeds \$50,000,000, or

5 “(II) exceeds \$5,000,000 and is  
6 5 percent or more of the target liabil-  
7 ity of the plan before such change.

8 “(i) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
9 TION.—

10 “(1) IN GENERAL.—The due date for any pay-  
11 ment of any minimum required contribution for any  
12 plan year shall be 8½ months after the close of the  
13 plan year.

14 “(2) INTEREST.—Any minimum required con-  
15 tribution for a plan year which is made on a date  
16 other than the valuation date for such plan year  
17 shall be properly adjusted for interest accruing for  
18 the period between the valuation date and the pay-  
19 ment date, determined by using the applicable effec-  
20 tive interest rate (as defined in subsection (g)(3))  
21 for the plan year.

22 “(j) QUARTERLY CONTRIBUTIONS REQUIRED.—

23 “(1) FAILURE TO TIMELY MAKE REQUIRED IN-  
24 STALLMENT.—

1           “(A) IN GENERAL.—In the case of a plan  
2 to which this subsection applies, the employer  
3 maintaining the plan shall make the required  
4 installments under this subsection and if the  
5 employer fails to pay the full amount of a re-  
6 quired installment for the plan year, then the  
7 amount of interest charged under subsection  
8 (i)(2) on the underpayment for the period of  
9 underpayment shall be determined by using a  
10 rate of interest equal to the rate otherwise used  
11 under subsection (i)(2) plus 5 percentage  
12 points.

13           “(B) PLANS TO WHICH SUBSECTION AP-  
14 PLIES.—This subsection applies to any defined  
15 benefit plan to which this section applies other  
16 than a plan which—

17                   “(i) is a plan described in subsection  
18                   (g)(1)(B)(ii), or

19                   “(ii) had an unfunded target liability  
20                   of \$1,000,000 or less for the preceding  
21                   plan year.

22           “(2) AMOUNT OF UNDERPAYMENT, PERIOD OF  
23 UNDERPAYMENT.—For purposes of paragraph (1)—

24                   “(A) AMOUNT.—The amount of the under-  
25                   payment shall be the excess of—

1 “(i) the required installment, over

2 “(ii) the amount (if any) of the in-  
3 stallment contributed to or under the plan  
4 on or before the due date for the install-  
5 ment.

6 “(B) PERIOD OF UNDERPAYMENT.—The  
7 period for which interest is charged under this  
8 subsection with regard to any portion of the un-  
9 derpayment shall run from the due date for the  
10 installment to the date on which such portion is  
11 contributed to or under the plan.

12 “(C) ORDER OF CREDITING CONTRIBU-  
13 TIONS.—For purposes of subparagraph (A)(ii),  
14 contributions shall be credited against unpaid  
15 required installments in the order in which such  
16 installments are required to be paid.

17 “(3) NUMBER OF REQUIRED INSTALLMENTS;  
18 DUE DATES.—For purposes of this subsection—

19 “(A) PAYABLE IN 4 INSTALLMENTS.—  
20 There shall be 4 required installments for each  
21 plan year.

22 “(B) TIME FOR PAYMENT OF INSTALL-  
23 MENTS.—

<b>In the case of the following</b>	
<b>required installments:</b>	<b>The due date is:</b>
1st .....	April 15
2nd .....	July 15

**In the case of the following  
required installments:**

3rd .....  
4th .....

**The due date is:**

October 15  
January 15 of the following year.

1           “(4) AMOUNT OF REQUIRED INSTALLMENT.—

2           For purposes of this subsection—

3                   “(A) IN GENERAL.—The amount of any  
4                   required installment shall be 25 percent of the  
5                   required annual payment.

6                   “(B) REQUIRED ANNUAL PAYMENT.—For  
7                   purposes of subparagraph (A), the term ‘re-  
8                   quired annual payment’ means the lesser of—

9                           “(i) 90 percent of the minimum re-  
10                           quired contribution under subsection (a)  
11                           required to be contributed to or under the  
12                           plan by the employer for the plan year, or

13                           “(ii) 100 percent of the minimum re-  
14                           quired contribution so required for the pre-  
15                           ceding plan year (without regard to any  
16                           waiver under section 302(c)).

17           Clause (ii) shall not apply if the preceding plan  
18           year was not a year of 12 months. In the case  
19           of any plan year beginning in 2007, the amount  
20           under clause (ii) for the preceding plan year  
21           shall be determined by reference to the amount  
22           required to be contributed to or under the plan

1 under section 302 (as such section was in effect  
2 before the date of the enactment of this part).

3 “(5) LIQUIDITY REQUIREMENT.—

4 “(A) IN GENERAL.—A plan to which this  
5 paragraph applies shall be treated as failing to  
6 pay the full amount of any required installment  
7 to the extent that the value of the liquid assets  
8 paid in such installment is less than the liquid-  
9 ity shortfall (whether or not such liquidity  
10 shortfall exceeds the amount of such install-  
11 ment required to be paid but for this para-  
12 graph).

13 “(B) PLANS TO WHICH PARAGRAPH AP-  
14 PLIES.—This paragraph shall apply to a de-  
15 fined benefit plan—

16 “(i) to which this subsection applies  
17 for a plan year, and

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

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

1           “(D) LIMITATION ON INCREASE.—In no  
2 event shall the increase in the amount of any  
3 required installment under subparagraph (A)  
4 exceed the sum of the unfunded target liability  
5 and target normal cost for the plan year.

6           “(E) DEFINITIONS.—For purposes of this  
7 paragraph—

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

16           “(ii) BASE AMOUNT.—

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

24           “(II) SPECIAL RULE.—If the  
25 amount determined under subclause

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

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

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

1                   “(I) the plan’s funded target li-  
2                   ability percentage (as defined in sec-  
3                   tion 305(e)) for the plan year, and

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

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

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

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

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

1           “(B) SHORT PLAN YEAR.—This subsection  
2           shall be applied to plan years of less than 12  
3           months in accordance with regulations pre-  
4           scribed by the Secretary of the Treasury.

5           “(k) IMPOSITION OF LIEN WHERE FAILURE TO  
6 MAKE REQUIRED CONTRIBUTIONS.—

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

9           “(A) any person fails to make a required  
10           installment under subsection (j) or any other  
11           payment required under this section before the  
12           due date for such installment or other payment,  
13           and

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

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

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

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

4 This subsection shall apply to a defined benefit plan  
5 for any plan year for which the funded target liabil-  
6 ity percentage (within the meaning of section  
7 305(e)) of such plan is less than 100 percent. This  
8 subsection shall not apply to any plan to which sec-  
9 tion 4021 does not apply.

10 “(3) AMOUNT OF LIEN.—For purposes of para-  
11 graph (1), the amount of the lien shall be equal to  
12 the aggregate unpaid balance of required install-  
13 ments and other payments required under this sec-  
14 tion (including interest) for which payment has not  
15 been made before the due date.

16 “(4) NOTICE OF FAILURE; LIEN.—

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

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

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

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

15 “(5) ENFORCEMENT.—Any lien created under  
16 paragraph (1) may be perfected and enforced only  
17 by the Pension Benefit Guaranty Corporation, or at  
18 the direction of the Pension Benefit Guaranty Cor-  
19 poration, by the contributing sponsor (or any mem-  
20 ber of the controlled group (as defined in section  
21 302(f)(3)) of the contributing sponsor).

22 “(6) DEFINITIONS.—For purposes of this sub-  
23 section, the terms ‘due date’ and ‘required install-  
24 ment’ have the meanings given such terms by sub-  
25 section (j), except that in the case of a payment

1 other than a required installment, the due date shall  
2 be the date such payment is required to be made  
3 under this section.

4 “(1) REGULATIONS.—The Secretary of the Treasury  
5 shall prescribe such regulations as are necessary to carry  
6 out the provisions of this section, including regulations—

7 “(1) for the proper treatment of increases in li-  
8 abilities of any plan pursuant to plan amendments  
9 which are adopted, or which take effect, on a date  
10 during the plan year other than the valuation date,

11 “(2) for the application of any small plan ex-  
12 ception under this section in cases of mergers and  
13 acquisitions, and

14 “(3) for the application of this section in the  
15 case of a plan maintained by more than one em-  
16 ployer.

17 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER  
18 PLANS

19 “SEC. 304. (a) IN GENERAL.—In the case of a multi-  
20 employer plan to which this section 302(a)(2)(C) applies,  
21 the accumulated funding deficiency of the plan for any  
22 plan year for purposes of section 302 shall be—

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

1 years (beginning with the first plan year to which  
2 section 302 applies to the plan) over the total credits  
3 to such account for such years, or

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

7 “(b) FUNDING STANDARD ACCOUNT.—

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

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

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

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

21 “(i) in the case of a plan in existence  
22 on January 1, 1974, the unfunded past  
23 service liability under the plan on the first  
24 day of the first plan year to which this sec-

1           tion applies, over a period of 40 plan  
2           years,

3           “(ii) in the case of a plan which comes  
4           into existence after January 1, 1974, the  
5           unfunded past service liability under the  
6           plan on the first day of the first plan year  
7           to which this section applies, over a period  
8           of 30 plan years,

9           “(iii) separately, with respect to each  
10          plan year, the net increase (if any) in un-  
11          funded past service liability under the plan  
12          arising from plan amendments adopted in  
13          such year, over a period of 30 plan years,

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

18          “(v) separately, with respect to each  
19          plan year, the net loss (if any) resulting  
20          from changes in actuarial assumptions  
21          used under the plan, over a period of 30  
22          plan years,

23          “(C) the amount necessary to amortize  
24          each waived funding deficiency (within the  
25          meaning of section 302(c)(3)) for each prior

1 plan year in equal annual installments (until  
2 fully amortized) over a period of 15 plan years,

3 “(D) the amount necessary to amortize in  
4 equal annual installments (until fully amor-  
5 tized) over a period of 5 plan years any amount  
6 credited to the funding standard account under  
7 section 302(b)(3)(D) (as in effect on the day  
8 before the date of the enactment of this sec-  
9 tion), and

10 “(E) the amount necessary to amortize in  
11 equal annual installments (until fully amor-  
12 tized) over a period of 20 years the contribu-  
13 tions which would be required to be made under  
14 the plan but for the provisions of section  
15 302(c)(7)(A)(i)(I) (as in effect on the day be-  
16 fore the date of the enactment of this section).

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

20 “(A) the amount considered contributed by  
21 the employer to or under the plan for the plan  
22 year,

23 “(B) the amount necessary to amortize in  
24 equal annual installments (until fully amor-  
25 tized)—

1           “(i) separately, with respect to each  
2           plan year, the net decrease (if any) in un-  
3           funded past service liability under the plan  
4           arising from plan amendments adopted in  
5           such year, over a period of 30 plan years,

6           “(ii) separately, with respect to each  
7           plan year, the net experience gain (if any)  
8           under the plan, over a period of 15 plan  
9           years, and

10           “(iii) separately, with respect to each  
11           plan year, the net gain (if any) resulting  
12           from changes in actuarial assumptions  
13           used under the plan, over a period of 30  
14           plan years,

15           “(C) the amount of the waived funding de-  
16           ficiency (within the meaning of section  
17           302(c)(3)) for the plan year, and

18           “(D) in the case of a plan year for which  
19           the accumulated funding deficiency is deter-  
20           mined under the funding standard account if  
21           such plan year follows a plan year for which  
22           such deficiency was determined under the alter-  
23           native minimum funding standard under section  
24           305 (as in effect on the day before the date of  
25           the enactment of this section), the excess (if

1 any) of any debit balance in the funding stand-  
2 ard account (determined without regard to this  
3 subparagraph) over any debit balance in the al-  
4 ternative minimum funding standard account.

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

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

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

22 “(5) INTEREST.—The funding standard ac-  
23 count (and items therein) shall be charged or cred-  
24 ited (as determined under regulations prescribed by  
25 the Secretary of the Treasury) with interest at the

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

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

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

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

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

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

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

12 “(i) was adopted before such date,

13 and

14 “(ii) was effective for any plan partici-  
15 pant before the beginning of the first plan  
16 year beginning on or after such date,

17 shall be amortized in equal annual installments  
18 (until fully amortized) over 40 plan years, be-  
19 ginning with the plan year in which the change  
20 arises.

21 “(7) SPECIAL RULES.—For purposes of this  
22 section—

23 “(A) WITHDRAWAL LIABILITY.—Any  
24 amount received by a multiemployer plan in  
25 payment of all or part of an employer’s with-

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

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

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

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

24 The preceding sentence shall not apply to the  
25 extent of any accumulated funding deficiency

1 under section 4243(a) as of the end of the last  
2 plan year that the plan was in reorganization.

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

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

22 “(E) ELECTION FOR DEFERRAL OF  
23 CHARGE FOR PORTION OF NET EXPERIENCE  
24 LOSS.—If an election is in effect under section  
25 302(b)(7)(F) (as in effect on the day before the

1 date of the enactment of this section) for any  
2 plan year, the funding standard account shall  
3 be charged in the plan year to which the por-  
4 tion of the net experience loss was deferred in  
5 the same manner as required under such sec-  
6 tion (and paragraph (2)(B)(iv) shall not apply  
7 to the amount so charged).

8 “(F) FINANCIAL ASSISTANCE.—Any  
9 amount of any financial assistance from the  
10 Pension Benefit Guaranty Corporation to any  
11 plan, and any repayment of such amount, shall  
12 be taken into account under this section and  
13 section 302 in such manner as determined by  
14 the Secretary of the Treasury.

15 “(c) SPECIAL RULES.—

16 “(1) DETERMINATIONS TO BE MADE UNDER  
17 FUNDING METHOD.—For purposes of this section,  
18 normal costs, accrued liability, past service liabilities,  
19 and experience gains and losses shall be determined  
20 under the funding method used to determine costs  
21 under the plan.

22 “(2) VALUATION OF ASSETS.—

23 “(A) IN GENERAL.—For purposes of this  
24 section, the value of the plan’s assets shall be  
25 determined on the basis of any reasonable actu-

1           arial method of valuation which takes into ac-  
2           count fair market value and which is permitted  
3           under regulations prescribed by the Secretary of  
4           the Treasury.

5           “(B) ELECTION WITH RESPECT TO  
6           BONDS.—The value of a bond or other evidence  
7           of indebtedness which is not in default as to  
8           principal or interest may, at the election of the  
9           plan administrator, be determined on an amor-  
10          tized basis running from initial cost at purchase  
11          to par value at maturity or earliest call date.  
12          Any election under this subparagraph shall be  
13          made at such time and in such manner as the  
14          Secretary of the Treasury shall by regulations  
15          provide, shall apply to all such evidences of in-  
16          debtedness, and may be revoked only with the  
17          consent of such Secretary.

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

23                 “(A) which, in the aggregate, are reason-  
24                 able (taking into account the experience of the  
25                 plan and reasonable expectations), and

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

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

7           “(A) a change in benefits under the Social  
8           Security Act or in other retirement benefits cre-  
9           ated under Federal or State law, or

10           “(B) a change in the definition of the term  
11           ‘wages’ under section 3121 of the Internal Rev-  
12           enue Code of 1986, or a change in the amount  
13           of such wages taken into account under regula-  
14           tions prescribed for purposes of section  
15           401(a)(5) of such Code,

16           results in an increase or decrease in accrued liability  
17           under a plan, such increase or decrease shall be  
18           treated as an experience loss or gain.

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

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

1           “(B) all amounts described in paragraphs  
2           (2)(B), (C), and (D) and (3)(B) of subsection  
3           (b) which are required to be amortized shall be  
4           considered fully amortized for purposes of such  
5           paragraphs.

6           “(6) FULL-FUNDING LIMITATION.—

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

10           “(i) the accrued liability (including  
11           normal cost) under the plan (determined  
12           under the entry age normal funding meth-  
13           od if such accrued liability cannot be di-  
14           rectly calculated under the funding method  
15           used for the plan), over

16           “(ii) the lesser of—

17           “(I) the fair market value of the  
18           plan’s assets, or

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

21           For purposes of subparagraph (A), unless oth-  
22           erwise provided by the plan, the accrued liabil-  
23           ity under a plan shall not include benefits which  
24           are not nonforfeitable under the plan after the  
25           termination of the plan (taking into consider-

1           ation section 411(d)(3)) of the Internal Rev-  
2           enue Code of 1986).

3           “(B) MINIMUM AMOUNT.—

4                 “(i) IN GENERAL.—In no event shall  
5           the full-funding limitation determined  
6           under subparagraph (A) be less than the  
7           excess (if any) of—

8                 “(I) 90 percent of the current li-  
9           ability of the plan (including the ex-  
10          pected increase in current liability due  
11          to benefits accruing during the plan  
12          year), over

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

15                “(ii) ASSETS.—For purposes of clause  
16          (i), assets shall not be reduced by any  
17          credit balance in the funding standard ac-  
18          count.

19           “(C) CURRENT LIABILITY.—For purposes  
20          of this paragraph—

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

24                “(ii) TREATMENT OF UNPREDICTABLE  
25          CONTINGENT EVENT BENEFITS.—For pur-

1 poses of clause (i), any benefit contingent  
2 on an event other than—

3 “(I) age, service, compensation,  
4 death, or disability, or

5 “(II) an event which is reason-  
6 ably and reliably predictable (as deter-  
7 mined by the Secretary of the Treas-  
8 ury),

9 shall not be taken into account until the  
10 event on which the benefit is contingent oc-  
11 curs.

12 “(iii) INTEREST RATE USED.—The  
13 rate of interest used to determine current  
14 liability under this paragraph shall be the  
15 rate of interest determined under subpara-  
16 graph (D).

17 “(iv) MORTALITY TABLES.—

18 “(I) COMMISSIONERS’ STANDARD  
19 TABLE.—In the case of plan years be-  
20 ginning before the first plan year to  
21 which the first tables prescribed under  
22 subclause (II) apply, the mortality  
23 table used in determining current li-  
24 ability under this paragraph shall be  
25 the table prescribed by the Secretary

1 of the Treasury which is based on the  
2 prevailing commissioners' standard  
3 table (described in section  
4 807(d)(5)(A) of the Internal Revenue  
5 Code of 1986) used to determine re-  
6 serves for group annuity contracts  
7 issued on January 1, 1993.

8 “(II) SECRETARIAL AUTHOR-  
9 ITY.—The Secretary of the Treasury  
10 may by regulation prescribe for plan  
11 years beginning after December 31,  
12 1999, mortality tables to be used in  
13 determining current liability under  
14 this subsection. Such tables shall be  
15 based upon the actual experience of  
16 pension plans and projected trends in  
17 such experience. In prescribing such  
18 tables, the Secretary of the Treasury  
19 shall take into account results of  
20 available independent studies of mor-  
21 tality of individuals covered by pen-  
22 sion plans.

23 “(v) SEPARATE MORTALITY TABLES  
24 FOR THE DISABLED.—Notwithstanding  
25 clause (iv)—

1           “(I) IN GENERAL.—The Sec-  
2           retary of the Treasury shall establish  
3           mortality tables which may be used  
4           (in lieu of the tables under clause (ii))  
5           to determine current liability under  
6           this subsection for individuals who are  
7           entitled to benefits under the plan on  
8           account of disability. The Secretary of  
9           the Treasury shall establish separate  
10          tables for individuals whose disabil-  
11          ities occur in plan years beginning be-  
12          fore January 1, 1995, and for individ-  
13          uals whose disabilities occur in plan  
14          years beginning on or after such date.

15           “(II) SPECIAL RULE FOR DIS-  
16          ABILITIES OCCURRING AFTER 1994.—  
17          In the case of disabilities occurring in  
18          plan years beginning after December  
19          31, 1994, the tables under subclause  
20          (I) shall apply only with respect to in-  
21          dividuals described in such subclause  
22          who are disabled within the meaning  
23          of title II of the Social Security Act  
24          and the regulations thereunder.

1           “(vi) PERIODIC REVIEW.—The Sec-  
2           retary of the Treasury shall periodically (at  
3           least every 5 years) review any tables in ef-  
4           fect under this subparagraph and shall, to  
5           the extent such Secretary determines nec-  
6           essary, update the tables to reflect the ac-  
7           tual experience of pension plans and pro-  
8           jected trends in such experience.

9           “(D) REQUIRED CHANGE OF INTEREST  
10          RATE.—For purposes of determining a plan’s  
11          current liability for purposes of this para-  
12          graph—

13           “(i) IN GENERAL.—If any rate of in-  
14           terest used under the plan under sub-  
15           section (b)(5) to determine cost is not  
16           within the permissible range, the plan shall  
17           establish a new rate of interest within the  
18           permissible range.

19           “(ii) PERMISSIBLE RANGE.—For pur-  
20           poses of this subparagraph—

21           “(I) IN GENERAL.—Except as  
22           provided in subclause (II), the term  
23           ‘permissible range’ means a rate of in-  
24           terest which is not more than 5 per-  
25           cent above, and not more than 10 per-

1 cent below, the weighted average of  
2 the rates of interest on 30-year Treas-  
3 ury securities during the 4-year period  
4 ending on the last day before the be-  
5 ginning of the plan year.

6 “(II) SECRETARIAL AUTHOR-  
7 ITY.—If the Secretary of the Treasury  
8 finds that the lowest rate of interest  
9 permissible under subclause (I) is un-  
10 reasonably high, such Secretary may  
11 prescribe a lower rate of interest, ex-  
12 cept that such rate may not be less  
13 than 80 percent of the average rate  
14 determined under such subclause.

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

18 “(I) determined without taking  
19 into account the experience of the  
20 plan and reasonable expectations, but

21 “(II) consistent with the assump-  
22 tions which reflect the purchase rates  
23 which would be used by insurance  
24 companies to satisfy the liabilities  
25 under the plan.

1           “(7) ANNUAL VALUATION.—

2           “(A) IN GENERAL.—For purposes of this  
3 section, a determination of experience gains and  
4 losses and a valuation of the plan’s liability  
5 shall be made not less frequently than once  
6 every year, except that such determination shall  
7 be made more frequently to the extent required  
8 in particular cases under regulations prescribed  
9 by the Secretary of the Treasury.

10           “(B) VALUATION DATE.—

11           “(i) CURRENT YEAR.—Except as pro-  
12 vided in clause (ii), the valuation referred  
13 to in subparagraph (A) shall be made as of  
14 a date within the plan year to which the  
15 valuation refers or within one month prior  
16 to the beginning of such year.

17           “(ii) USE OF PRIOR YEAR VALU-  
18 ATION.—The valuation referred to in sub-  
19 paragraph (A) may be made as of a date  
20 within the plan year prior to the year to  
21 which the valuation refers if, as of such  
22 date, the value of the assets of the plan are  
23 not less than 100 percent of the plan’s cur-  
24 rent liability (as defined in paragraph

1 (6)(C) without regard to clause (iv) there-  
2 of).

3 “(iii) ADJUSTMENTS.—Information  
4 under clause (ii) shall, in accordance with  
5 regulations, be actuarially adjusted to re-  
6 flect significant differences in participants.

7 “(iv) LIMITATION.—A change in fund-  
8 ing method to use a prior year valuation,  
9 as provided in clause (ii), may not be made  
10 unless as of the valuation date within the  
11 prior plan year, the value of the assets of  
12 the plan are not less than 125 percent of  
13 the plan’s current liability (as defined in  
14 paragraph (6)(C) without regard to clause  
15 (iv) thereof).

16 “(8) TIME WHEN CERTAIN CONTRIBUTIONS  
17 DEEMED MADE.—For purposes of this section, any  
18 contributions for a plan year made by an employer  
19 after the last day of such plan year, but not later  
20 than two and one-half months after such day, shall  
21 be deemed to have been made on such last day. For  
22 purposes of this subparagraph, such two and one-  
23 half month period may be extended for not more  
24 than six months under regulations prescribed by the  
25 Secretary of the Treasury.”

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 in section 1 of such Act, as amended by this Act, is  
 3 amended by inserting after the item relating to section  
 4 302 the following new item:

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

“Sec. 304. Minimum funding standards for multiemployer plans.”.

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

8 **SEC. 313. LIMITATION ON BENEFIT IMPROVEMENTS BY SIN-**  
 9 **GLE-EMPLOYER PLANS WHICH ARE UNDER-**  
 10 **FUNDED OR MAINTAINED BY FINANCIALLY**  
 11 **WEAK OR BANKRUPT EMPLOYERS.**

12 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
 13 the Employee Retirement Income Security Act of 1974 (as  
 14 amended by sections 311 and 312 of this Act) is amended  
 15 by inserting after section 304 the following new section:

16 “LIMITATIONS ON BENEFIT IMPROVEMENTS BY SINGLE-  
 17 EMPLOYER PLANS WHICH ARE UNDERFUNDED OR  
 18 MAINTAINED BY FINANCIALLY WEAK OR BANKRUPT  
 19 EMPLOYERS

20 “SEC. 305. (a) BENEFIT LIMITATION REQUIRE-  
 21 MENT.—Except as provided in subsection (f)(5), a defined  
 22 benefit plan which is a single-employer plan to which sec-  
 23 tion 302 applies shall meet the requirements of sub-  
 24 sections (b), (c), and (d).

1 “(b) LIMITATIONS ON BENEFIT INCREASES.—

2 “(1) IN GENERAL.—A plan meets the require-  
3 ments of this subsection for any plan year if the  
4 plan provides that if the plan’s adjusted funded tar-  
5 get liability percentage for the preceding plan year  
6 is less than 80 percent, any applicable benefit in-  
7 crease shall not take effect during the plan year  
8 until the plan has met the additional funding re-  
9 quirements of paragraph (2).

10 “(2) ADDITIONAL FUNDING REQUIREMENTS.—

11 “(A) IN GENERAL.—The requirements of  
12 this paragraph are met with respect to any ap-  
13 plicable benefit increase for any plan year if the  
14 plan sponsor, in addition to any other contribu-  
15 tion required under section 303, contributes to  
16 or under the plan an amount (if any) which,  
17 when added to the portion of the minimum re-  
18 quired contribution for the plan year described  
19 in subparagraphs (B) and (C) of section  
20 303(a)(1), is sufficient to result in the adjusted  
21 funded target liability percentage of the plan  
22 for the plan year being equal to 80 percent.

23 “(B) BENEFIT INCREASES COUNTED FOR  
24 PURPOSES OF FUNDED PERCENTAGE.—For  
25 purposes of subparagraph (A), the adjusted

1 funded target liability percentage shall be deter-  
2 mined by taking into account all increases in li-  
3 abilities of the plan which would have been  
4 taken into account in determining such percent-  
5 age if the applicable benefit increase had taken  
6 effect as of the beginning of the plan year.

7 “(C) PAYMENTS AFTER VALUATION  
8 DATE.—In the case of any contribution required  
9 by this subsection which is made after the first  
10 day of the plan year, the amount of the con-  
11 tribution shall be adjusted in the same manner  
12 as it would be under section 303(i)(2) if it were  
13 a minimum required contribution for the plan  
14 year.

15 “(D) TREATMENT OF PAYMENT IN COM-  
16 PUTING MINIMUM REQUIRED CONTRIBUTION.—  
17 If any applicable benefit increase to which this  
18 subsection applies for any plan year is required  
19 to be taken into account in determining the  
20 minimum required contribution under section  
21 303 for the plan year, any payment required by  
22 this paragraph with respect to the applicable  
23 benefit increase shall, for purposes of deter-  
24 mining the amount of such minimum required  
25 contribution, be treated in the same manner as

1 a contribution for a preceding plan year is  
2 treated under section 303(g)(2)(C)(i).

3 “(3) APPLICABLE BENEFIT INCREASE.—For  
4 purposes of this subsection—

5 “(A) IN GENERAL.—The term ‘applicable  
6 benefit increase’ means, with respect to any  
7 plan year, any increase in liabilities of the plan  
8 by plan amendment (or otherwise as provided in  
9 regulations prescribed by the Secretary of the  
10 Treasury) which, but for this subsection, would  
11 occur during the plan year by reason of—

12 “(i) any increase in benefits,

13 “(ii) any change in the accrual of ben-  
14 efits, or

15 “(iii) any change in the rate at which  
16 benefits become nonforfeitable under the  
17 plan.

18 “(B) EXCEPTION FOR CERTAIN BENEFIT  
19 INCREASES.—In the case of a plan maintained  
20 pursuant to 1 or more collective bargaining  
21 agreements between employee representatives  
22 and 1 or more plan sponsors, such term shall  
23 not include any increase in liabilities of the plan  
24 by reason of any increase in benefits pursuant  
25 to, and for individuals covered by, the agree-

1           ments under a formula which is not based on  
2           a participant's compensation, but only if the  
3           rate of such increase is not in excess of the con-  
4           temporaneous rate of increase in average wages  
5           of participants covered by the amendment.

6           “(C) EXCEPTION FOR COLLECTIVELY BAR-  
7           GAINED INCREASES NEGOTIATED BEFORE  
8           UNDERFUNDING OCCURS.—In the case of a  
9           plan maintained pursuant to 1 or more collec-  
10          tive bargaining agreements between employee  
11          representatives and 1 or more plan sponsors  
12          and ratified in a plan year with respect to  
13          which the adjusted funded target liability per-  
14          centage was at least 80 percent, such term shall  
15          not include any increase or change described in  
16          subparagraph (A) pursuant to, and for individ-  
17          uals covered by, the agreements which takes ef-  
18          fect in any plan year beginning after the plan  
19          year in which the agreements are ratified and  
20          before the earlier of—

21                   “(i) the date on which the last of such  
22                   collective bargaining agreement terminates  
23                   (determined without regard to any exten-  
24                   sion thereof), or

1           “(ii) the date which is 3 years after  
2           the date on which this subsection would  
3           otherwise apply but for this subparagraph.

4           “(D) EXCEPTIONS.—Such term shall not  
5           include any increase in liabilities—

6           “(i) by reason of a plan amendment if  
7           such amendment is required as a condition  
8           of qualification under this part, or

9           “(ii) which is specified in regulations  
10          prescribed by the Secretary of the Treas-  
11          ury.

12          “(4) SPECIAL RULE FOR PLANS IN BANK-  
13          RUPTCY.—In the case of any period during which  
14          the plan sponsor is in bankruptcy—

15               “(A) paragraphs (1) and (2)(A) shall be  
16               applied by substituting ‘100 percent’ for ‘80  
17               percent’, and

18               “(B) the exceptions under subparagraphs  
19               (B) and (C) of paragraph (3) shall not apply.

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

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

1           “(A) if the plan’s adjusted funded target  
2 liability percentage as of the valuation date for  
3 the preceding plan year was less than 60 per-  
4 cent and the preceding plan year is not other-  
5 wise in a prohibited period, the plan sponsor  
6 shall, in addition to any other contribution re-  
7 quired under section 303, contribute for the  
8 current plan year and each succeeding plan  
9 year in the prohibited period with respect to the  
10 current plan year the amount (if any) which,  
11 when added to the portion of the minimum re-  
12 quired contribution for the plan year described  
13 in subparagraphs (B) and (C) of section  
14 303(a)(1), is sufficient to result in an adjusted  
15 funded target liability percentage for the plan  
16 year of 60 percent, and

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

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

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

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

1           ments described in the last sentence of sec-  
2           tion 204(b)(1)(G)), to a participant or ben-  
3           eficiary whose annuity starting date (as de-  
4           fined in section 205(h)(2)) occurs during a  
5           prohibited period,

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

9           “ (iii) any other payment specified by  
10          the Secretary of the Treasury by regula-  
11          tions.

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

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

21               “(ii) the present value (determined  
22               under guidance prescribed by the Pension  
23               Benefit Guaranty Corporation, using the  
24               interest and mortality assumptions under  
25               section 205(g)) of the maximum guarantee

1           with respect to the participant under sec-  
2           tion 4022.

3           The exception under this subparagraph shall  
4           only apply once with respect to any participant,  
5           except that, for purposes of this sentence, a  
6           participant and any beneficiary on his behalf  
7           (including an alternate payee, as defined in sec-  
8           tion 206(d)(3)(K)) shall be treated as 1 partici-  
9           pant. If the accrued benefit of a participant is  
10          allocated to such an alternate payee and 1 or  
11          more other persons, the amount under clause  
12          (ii) shall be allocated among such persons in  
13          the same manner as the accrued benefit is allo-  
14          cated unless the qualified domestic relations  
15          order (as defined in section 206(d)(3)(B)(i))  
16          provides otherwise.

17          “(3) PROHIBITED PERIOD.—For purposes of  
18          paragraph (1), the term ‘prohibited period’ means—

19                 “(A) except as provided in paragraph (5),  
20                 if a plan sponsor is required to make the con-  
21                 tribution for the current plan year under para-  
22                 graph (1), the period beginning on the 1st day  
23                 of the plan year and ending on the last day of  
24                 the 1st period of 2 consecutive plan years (be-  
25                 ginning on or after such 1st day) for which the

1 plan's adjusted funded target liability percent-  
2 age was at least 60 percent,

3 "(B) any period the plan sponsor is in  
4 bankruptcy, or

5 "(C) any period during which the plan has  
6 a liquidity shortfall (as defined in section  
7 303(j)(5)(E)(i)).

8 The prohibited period for purposes of subparagraph  
9 (B) shall not include any portion of a plan year  
10 (even if the plan sponsor is in bankruptcy during  
11 such period) which occurs on or after the date the  
12 plan's enrolled actuary certifies that, as of the valu-  
13 ation date for the plan year, the plan's adjusted  
14 funded target liability percentage is at least 100 per-  
15 cent.

16 "(4) RULES RELATING TO REQUIRED CON-  
17 TRIBUTIONS.—

18 "(A) SECURITY MAY BE PROVIDED.—

19 "(i) IN GENERAL.—A plan sponsor  
20 shall not be treated as failing to meet the  
21 requirements of paragraph (1) if the plan  
22 sponsor provides security in a form meet-  
23 ing the requirements of clause (ii) for any  
24 portion of the amount required to be con-  
25 tributed under paragraph (1) but which is

1 not so contributed. Such security shall be  
2 provided no later than the due date of the  
3 contribution to which it relates or such  
4 earlier date as the Secretary of Treasury  
5 may prescribe.

6 “(ii) FORM OF SECURITY.—The secu-  
7 rity required under clause (i) shall consist  
8 of—

9 “(I) a bond issued by a corporate  
10 surety company that is an acceptable  
11 surety for purposes of section 412,

12 “(II) cash, or United States obli-  
13 gations which mature in 3 years or  
14 less, held in escrow by a bank or simi-  
15 lar financial institution, or

16 “(III) such other form of security  
17 as is satisfactory to the Secretary of  
18 the Treasury and the parties involved.

19 “(iii) ENFORCEMENT.—Any security  
20 provided under clause (i) may be perfected  
21 and enforced at any time after the earlier  
22 of—

23 “(I) the date on which the plan  
24 terminates,

1           “(II) if there is a failure to make  
2           a payment of the minimum required  
3           contribution for any plan year begin-  
4           ning after the security is provided, the  
5           due date for the payment under sec-  
6           tion 303(i), or

7           “(III) if the adjusted funded tar-  
8           get liability percentage is less than 60  
9           percent for a consecutive period of 7  
10          years, the valuation date for the last  
11          year in the period.

12          “(iv) RELEASE OF SECURITY.—The  
13          security shall be released (and any  
14          amounts thereunder shall be refunded to-  
15          gether with any interest accrued thereon)  
16          at the end of the prohibited period for the  
17          failure to which the security relates. The  
18          Secretary of the Treasury may prescribe  
19          regulations for partial releases of the secu-  
20          rity by reason of increases in the adjusted  
21          funded target liability percentage.

22          “(v) SECURITY NOT TREATED AS  
23          PLAN ASSET.—Any security under this  
24          subparagraph shall not be taken into ac-  
25          count in determining the value of the

1           plan's assets except to the extent provided  
2           in clause (i).

3           “(B) TREATMENT AS UNPAID MINIMUM  
4           REQUIRED CONTRIBUTION.—The amount of any  
5           required contribution which a plan sponsor fails  
6           to make under paragraph (1) by the close of  
7           the plan year to which the contribution relates  
8           shall be treated as an unpaid minimum required  
9           contribution for purposes of subsection (j) and  
10          (k) of section 303 and for purposes of section  
11          4971 of the Internal Revenue Code of 1986.

12          “(5) SATISFACTION OF REQUIREMENT BEFORE  
13          CLOSE OF PLAN YEAR.—If, before the close of the  
14          current plan year—

15                 “(A) the plan sponsor makes the contribu-  
16                 tion required to be made under paragraph (1),  
17                 or

18                 “(B) the plan's enrolled actuary certifies  
19                 that, as of the valuation date for the plan year,  
20                 the adjusted funded target liability percentage  
21                 of the plan is at least 60 percent,

22          this subsection shall be applied as if no prohibited  
23          period had begun as of the beginning of such year  
24          and the plan shall, under rules described by the Sec-  
25          retary of the Treasury, restore any payments not

1 made during the prohibited period in effect before  
2 the application of this paragraph.

3 “(d) FREEZE ON PLAN BENEFITS.—

4 “(1) IN GENERAL.—The requirements of this  
5 subsection are met if the plan provides that, not-  
6 withstanding any other provision of the plan, during  
7 a freeze period—

8 “(A) the accrued benefit, any death or dis-  
9 ability benefit, and any social security supple-  
10 ment described in the last sentence of section  
11 204(b)(1)(G) of each participant are frozen at  
12 the amount of such benefit or supplement im-  
13 mediately before the freeze period, and

14 “(B) all other benefits provided under the  
15 plan are eliminated,

16 but only to the extent the freezing or elimination of  
17 such benefits would have been permitted under sec-  
18 tion 204(g) if they had been implemented by a plan  
19 amendment adopted immediately before the freeze  
20 period.

21 “(2) FREEZE PERIOD.—For purposes of para-  
22 graph (1), the term ‘freeze period’ means any period  
23 treated as a prohibited period under subsection  
24 (c)(3)(A). A rule similar to the rule of subsection  
25 (c)(5) shall apply for purposes of this subsection.

1           “(3) COLLECTIVELY BARGAINED PLANS.—In  
 2 the case of a plan maintained pursuant to 1 or more  
 3 collective bargaining agreements between employee  
 4 representatives and 1 or more plan sponsors and  
 5 ratified in a plan year with respect to which the  
 6 funded target liability percentage as of the valuation  
 7 date was at least 60 percent, this subsection shall  
 8 not be applied to benefits pursuant to, and individ-  
 9 uals covered by, such agreement for plan years be-  
 10 ginning before the earlier of—

11                   “(A) the date on which the last of such  
 12 collective bargaining agreements terminates (de-  
 13 termined without regard to any extension there-  
 14 of), or

15                   “(B) the date which is 3 years after the  
 16 date the freeze period would otherwise begin  
 17 under this subsection.

18           “(e) DEFINITIONS AND RULES RELATING TO APPLI-  
 19 CATION OF LIMITATIONS.—For purposes of this section—

20                   “(1) FUNDED TARGET LIABILITY PERCENT-  
 21 AGE.—

22                   “(A) IN GENERAL.—The term ‘funded tar-  
 23 get liability percentage’ means, with respect to  
 24 any plan year, the percentage equal to a frac-  
 25 tion—

1                   “(i) the numerator of which is the  
2                   value of assets of the plan determined  
3                   under section 303(g)(2) for the plan year,  
4                   and

5                   “(ii) the denominator of which is the  
6                   target liability for the plan year.

7                   “(B) ADJUSTED FUNDED TARGET LIABIL-  
8                   ITY PERCENTAGE.—The term ‘adjusted funded  
9                   target liability percentage’ means the funded  
10                  target liability percentage which is determined  
11                  under subparagraph (A) by increasing each of  
12                  the amounts under clauses (i) and (ii) of sub-  
13                  paragraph (A) by the aggregate amount of pur-  
14                  chases of annuities, payments of single sums,  
15                  and such other disbursements as the Secretary  
16                  of the Treasury shall prescribe in regulations,  
17                  which were made by the plan during the pre-  
18                  ceding 2 plan years.

19                  “(2) CERTIFICATION.—A certification by an en-  
20                  rolled actuary under this section shall be made in  
21                  such form and manner as the Secretary of the  
22                  Treasury may prescribe and shall be based on the  
23                  information available to the enrolled actuary. The  
24                  enrolled actuary shall notify the plan administrator  
25                  of any change in the funded target liability percent-

1 age if the actual target liability or asset value differs  
2 from that used for the certification.

3 “(3) CONTRIBUTIONS INCLUDED IN ASSETS.—

4 In making a certification under paragraph (2) for  
5 purposes of this section, the determination of wheth-  
6 er and to what extent contributions are to be taken  
7 into account in computing the fair market value of  
8 the assets of the plan shall be made in the same  
9 manner as under section 303(g)(2)(C), except that  
10 contributions in excess of the minimum required  
11 contribution for any preceding plan year shall not be  
12 taken into account unless made before the date of  
13 the certification.

14 “(4) TREATMENT OF PLAN AS OF CLOSE OF  
15 PROHIBITED OR FREEZE PERIOD.—For purposes of  
16 applying this part—

17 “(A) OPERATION OF PLAN AFTER PE-  
18 RIOD.—Unless the plan provides otherwise, the  
19 accrual and payment of benefits which were  
20 prohibited, frozen, or eliminated under sub-  
21 section (c) or (d) shall resume, effective as of  
22 the day following the close of a prohibited or  
23 freeze period under subsection (c) or (d), which-  
24 ever is applicable.

1           “(B) TREATMENT OF AFFECTED BENE-  
2           FITS.—Nothing in this paragraph shall be con-  
3           strued as affecting the plan’s treatment of ben-  
4           efits prohibited, frozen, or eliminated during  
5           the prohibited or freeze period.

6           “(f) OTHER DEFINITIONS AND RULES.—For pur-  
7           poses of this section—

8           “(1) COORDINATION WITH MINIMUM REQUIRED  
9           CONTRIBUTIONS.—Any contribution by a plan spon-  
10          sor for a plan year shall be allocated first to any  
11          minimum required contribution under section 303  
12          for any plan year the valuation date of which occurs  
13          on or before the date of the contribution by the plan  
14          sponsor until all such minimum required contribu-  
15          tions are fully made and then to the contributions  
16          required under subsection (b), (c), or (d).

17          “(2) TERMS USED IN SECTION 303.—Any term  
18          used in this section which is also used in section 303  
19          shall have the meaning given such term by section  
20          303.

21          “(3) BANKRUPTCY.—A plan sponsor is in bank-  
22          ruptcy during any period the plan sponsor is a debt-  
23          or in a case under title 11, United States Code, or  
24          similar Federal or State law.

1           “(4) PLAN SPONSOR.—The term ‘plan sponsor’  
2 means the employer referred to in section 302(b)  
3 (without regard to paragraph (2)).

4           “(5) PLANS IN EXISTENCE LESS THAN 5  
5 YEARS.—This section (other than subsection (e))  
6 shall not apply to a plan for each of the plan’s first  
7 5 plan years. For purposes of this paragraph, plan  
8 years of any predecessor plan shall be taken into ac-  
9 count. Notwithstanding this paragraph, subsections  
10 (b) and (d) shall apply during any period the plan  
11 sponsor is in bankruptcy.

12           “(6) COORDINATION WITH OTHER REQUIRE-  
13 MENTS.—A plan to which this section applies shall  
14 not be treated as failing to meet any other require-  
15 ment of this Act merely because the plan does not  
16 make a payment required under the plan because  
17 the plan is prohibited from making the payment by  
18 reason of this section.

19           “(7) YEARS BEFORE EFFECTIVE DATE.—No  
20 plan year beginning before 2007 shall be taken into  
21 account in determining whether this section applies  
22 to any plan year beginning after 2006.”.

23           (b) CONFORMING AMENDMENTS.—

1           (1) Section 204 of such Act (29 U.S.C.1054) is  
2           amended by striking subsection (i) and by redesignig-  
3           nating subsection (j) as subsection (i).

4           (2) Section 206 of such Act (29 U.S.C.1056) is  
5           amended by striking subsection (e).

6           (c) CLERICAL AMENDMENT.—The table of contents  
7           in section 1 of such Act, as amended by this Act, is  
8           amended by adding at the end the following new item:

          “Sec. 305.Limitations on benefit improvements by single-employer plans  
          which are underfunded or maintained by financially weak  
          employers.”.

9           (d) EFFECTIVE DATE.—

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

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

20                   (A) the later of—

21                           (i) the date on which the last collec-  
22                           tive bargaining agreement relating to the  
23                           plan terminates (determined without re-  
24                           gard to any extension thereof agreed to

1 after the date of the enactment of this  
2 Act), or

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

7 (B) January 1, 2009.

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

14 **SEC. 314. TECHNICAL AND CONFORMING AMENDMENTS.**

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

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

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

22 “(i) a statement as to whether the  
23 percentage which the amount determined  
24 under section 304(c)(6)(A)(ii) bears to the  
25 amount determined under section

1           304(c)(6)(C), is at least 100 percent (and,  
2           if not, the actual percentage);”;

3           (3) in section 103(d)(8)(B), by striking “the re-  
4           quirements of section 302(c)(3)” and inserting “the  
5           applicable requirements of sections 303(h)(1) and  
6           304(c)(3)”;

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

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

11           “(A) in the case of a single-employer plan,  
12          the target liability (as defined in section 303(e))  
13          of the plan, or

14           “(B) in the case of a multiemployer plan,  
15          the current liability (as defined in section  
16          304(c)(6)(C)) under the plan,

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

19          (5) in section 203(a)(3)(C), by striking “section  
20          302(c)(8)” and inserting “section 302(f)(2)”;

21          (6) in section 204(g)(1), by striking “section  
22          302(c)(8)” and inserting “section 302(f)(2)”;

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

1 Act of 2004” and inserting “National Employee  
2 Savings and Trust Equity Guarantee Act of 2005”.

3 (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—

4 Title IV of such Act is amended—

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

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

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

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

24 “(1)(A) in the case of a single-employer plan,  
25 the sum of unpaid minimum required contributions

1 (within the meaning of section 4971(c)(4) of the In-  
2 ternal Revenue Code of 1986) with respect to the  
3 plan (if any) for the plan year in which the termi-  
4 nation date occurs and all preceding plan years  
5 (which, for purposes of this subparagraph, shall in-  
6 clude any increase in such sum which would result  
7 if no additional contributions (other than those al-  
8 ready made by the termination date) were made for  
9 the plan year in which the termination date occurs  
10 or for any previous plan year), or

11 “(B) in the case of a multiemployer plan, the  
12 outstanding balance of the accumulated funding de-  
13 ficiencies (within the meaning of section 304(a) of  
14 this Act and section 431(a) of the Internal Revenue  
15 Code of 1986) of the plan (if any) (which, for pur-  
16 poses of this subparagraph, shall include the amount  
17 of any increase in such accumulated funding defi-  
18 ciencies of the plan which would result if all pending  
19 applications for waivers of the minimum funding  
20 standard under section 302(c) of this Act or section  
21 412(d) of such Code and for extensions of the amor-  
22 tization period under section 302(d) of this Act or  
23 section 412(e) of such Code with respect to such  
24 plan were denied and if no additional contributions  
25 (other than those already made by the termination

1 date) were made for the plan year in which the ter-  
2 mination date occurs or for any previous plan year),

3 “(2)(A) in the case of a single-employer plan,  
4 the sum of the amortization payments described in  
5 subparagraph (B) or (C) of section 303(a)(1) of this  
6 Act or subparagraph (B) or (C) of section 430(a)(1)  
7 of the Internal Revenue Code of 1986 which were  
8 determined for the plan year in which the termi-  
9 nation date occurs or any preceding plan year, but  
10 are properly allocable to any succeeding plan year,  
11 or

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

17 “(3) in the case of a multiemployer plan, the  
18 outstanding balance of the amount of decreases in  
19 the minimum funding standard allowed before such  
20 date under section 302(d) of this Act or section  
21 431(e) of such Code (if any);”;

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

1           (6) in section 4243(a)(1)(B) (29 U.S.C.  
2           1423(a)(1)(B)), by striking “302(a)” each place it  
3           appears and inserting “304(a)”;

4           (7) in section 4243(f)(1) (29 U.S.C.  
5           1423(f)(1)), by striking “303(a)” and inserting  
6           “302(c)”;

7           (8) in section 4243(f)(2) (29 U.S.C.  
8           1423(f)(2)), by striking “303(c)” and inserting  
9           “302(c)(3)”;

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

12           (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4  
13 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.  
14 4 of 1978 (ratified and affirmed as law by Public Law  
15 98–532 (98 Stat. 2705)) is amended by striking  
16 “302(c)(8)” and inserting “302(f)(2)”, by striking  
17 “304(a) and (b)(2)(A)” and inserting “302(d) and  
18 (e)(1)(A)”, and by striking “412(c)(8)” and inserting  
19 “412(g)(2) ”.

20           (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-  
21 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.  
22 1057) is repealed.

23           (e) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to plan years beginning after De-  
25 cember 31, 2006.

1 **PART III—INTEREST RATE ASSUMPTIONS AND**

2 **DEDUCTIBLE AMOUNTS FOR 2006**

3 **SEC. 321. EXTENSION OF REPLACEMENT OF 30-YEAR**

4 **TREASURY RATES.**

5 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

9 (A) by striking “2006” and inserting  
10 “2007”, and

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

13 (2) DETERMINATION OF CURRENT LIABILITY.—

14 Subclause (IV) of section 412(l)(7)(C)(i) of such  
15 Code is amended—

16 (A) by striking “or 2005” and inserting “,  
17 2005, or 2006”, and

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

20 (b) AMENDMENTS OF ERISA.—

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

24 (A) by striking “2006” and inserting  
25 “2007”, and

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

3 (2) DETERMINATION OF CURRENT LIABILITY.—  
4 Subclause (IV) of section 302(d)(7)(C)(i) of such  
5 Act is amended—

6 (A) by striking “or 2005” and inserting “,  
7 2005, or 2006”, and

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

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

13 (c) PLAN AMENDMENTS.—Clause (ii) of section  
14 101(e)(2)(A) of the Pension Funding Equity Act of 2004  
15 is amended by striking “2006” and inserting “2007”.

16 **SEC. 322. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

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

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

4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to years beginning after December  
6 31, 2005.

7 **SEC. 323. UPDATING DEDUCTION RULES FOR COMBINA-**  
8 **TION OF PLANS.**

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

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

1           attributable to employer contributions to  
2           such plans in such preceding taxable  
3           years.”

4           (b) CONFORMING AMENDMENT.—Subparagraph (A)  
5 of section 4972(e)(6) of such Code (relating to nondeduct-  
6 ible contributions) is amended to read as follows:

7                   “(A) so much of the contributions to 1 or  
8           more defined contribution plans which are not  
9           deductible when contributed solely because of  
10          section 404(a)(7) as does not exceed the  
11          amount of contributions described in section  
12          401(m)(4)(A), or”.

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

## 16           **Subtitle B—Related Provisions**

### 17   **SEC. 331. REPLACEMENT OF 30-YEAR TREASURY RATE FOR** 18                   **CALCULATING LUMP-SUM DISTRIBUTIONS.**

19          (a) AMENDMENTS OF INTERNAL REVENUE CODE.—  
20 Section 417(e)(3)(A) of the Internal Revenue Code of  
21 1986 (relating to determination of present value) is  
22 amended—

23                   (1) by striking “and the applicable interest  
24          rate.” in clause (i) and inserting “and by using—

1           “(I) the phase-in yield curve  
2 method in the case of plan years be-  
3 ginning in 2007, 2008, 2009, and  
4 2010, and

5           “(II) the yield curve method for  
6 years beginning after 2010.”; and

7           (2) by striking subclause (II) of clause (ii) and  
8 inserting:

9           “(II) YIELD CURVE METHOD.—  
10 The term ‘yield curve method’ has the  
11 meaning given such term by section  
12 430(h)(2)(B).

13           “(III) PHASE-IN YIELD CURVE  
14 METHOD.—The term ‘phase in yield  
15 curve method’ has the meaning given  
16 the term by section 430(h)(2)(C), ex-  
17 cept that the annual rate of interest  
18 on 30-year Treasury securities shall  
19 be substituted for the interest rate  
20 under section 430(h)(2)(C)(i)(II) and  
21 the applicable percentage determined  
22 under subclause (IV) shall be sub-  
23 stituted for the applicable percentage  
24 used under such section.

1                   “(IV) APPLICABLE PERCENT-  
 2                   AGE.—For purposes of subclause  
 3                   (III), the applicable percentage shall  
 4                   be determined in accordance with the  
 5                   following table:

<b>In the case of years beginning in—</b>	<b>The applicable percentage is—</b>
2007 .....	20
2008 .....	40
2009 .....	60
2010 .....	80.”.

6           (b) AMENDMENTS OF ERISA.—Section 205(g)(3)(A)  
 7 of the Employee Retirement Income Security Act of 1974  
 8 (29 U.S.C. 1055(g)(3)) is amended—

9           (1) by striking “and the applicable interest  
 10           rate.” in clause (i) and inserting “and by using—

11                   “(I) the phase-in yield curve  
 12                   method in the case of plan years be-  
 13                   ginning in 2007, 2008, 2009, and  
 14                   2010, and

15                   “(II) the yield curve method for  
 16                   years beginning after 2010.”; and

17           (2) by striking subclause (II) of clause (ii) and  
 18           inserting:

19                   “(II) YIELD CURVE METHOD.—  
 20                   The term ‘yield curve method’ has the  
 21                   meaning given such term by section  
 22                   303(h)(2)(B).

1                   “(III) PHASE-IN YIELD CURVE  
 2                   METHOD.—The term ‘phase in yield  
 3                   curve method’ has the meaning given  
 4                   the term by section 303(h)(2)(C), ex-  
 5                   cept that the annual rate of interest  
 6                   on 30-year Treasury securities shall  
 7                   be substituted for the interest rate  
 8                   under section 303(h)(2)(C)(i)(II) and  
 9                   the applicable percentage determined  
 10                  under subclause (IV) shall be sub-  
 11                  stituted for the applicable percentage  
 12                  used under such section.

13                   “(IV) APPLICABLE PERCENT-  
 14                  AGE.—For purposes of subclause  
 15                  (III), the applicable percentage shall  
 16                  be determined in accordance with the  
 17                  following table:

<b>In the case of years beginning in—</b>	<b>The applicable percentage is—</b>
2007 .....	20
2008 .....	40
2009 .....	60
2010 .....	80.”.

18                  (c) EFFECTIVE DATES.—

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

1           (2) SPECIAL RULE FOR CERTAIN OPTIONAL  
2 BENEFITS.—If—

3           (A) for the last plan year of a plan begin-  
4 ning in 2003, the plan provides that the appli-  
5 cable interest rate under section 417(e)(3) of  
6 the Internal Revenue Code of 1986 and section  
7 205(g)(3) of Employee Retirement Income Se-  
8 curity Act of 1974 shall be used for purposes  
9 of determining the amount of a benefit (other  
10 than the accrued benefit) to which such sections  
11 417(e)(3) and 205(g)(3) do not apply, and

12           (B) such plan is amended to provide that  
13 a rate other than the applicable interest rate  
14 shall be used for such purposes and the first  
15 plan year for which such amendment is effective  
16 begins no later than January 1, 2007,

17 such plan shall not fail to meet the requirements of  
18 section 411(d)(6) of the Internal Revenue Code of  
19 1986 and section 204(g) of Employee Retirement  
20 Income Security Act of 1974 by reason of such  
21 amendment.

1 **SEC. 332. INTEREST RATE ASSUMPTION FOR APPLYING**  
2 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**  
3 **TRIBUTIONS.**

4 (a) **IN GENERAL.**—Clause (ii) of section  
5 415(b)(2)(E) of the Internal Revenue Code of 1986 is  
6 amended to read as follows:

7 “(ii) For purposes of adjusting any  
8 benefit under subparagraph (B) for any  
9 form of benefit subject to section  
10 417(e)(3), clause (i) shall be applied by  
11 substituting ‘5.5 percent’ for ‘5 percent’.”.

12 (b) **EFFECTIVE DATE.**—The amendment made by  
13 subsection (a) shall apply to years beginning after Decem-  
14 ber 31, 2005.

15 **SEC. 333. RESTRICTIONS ON FUNDING OF NONQUALIFIED**  
16 **DEFERRED COMPENSATION PLANS BY EM-**  
17 **PLOYERS MAINTAINING UNDERFUNDED OR**  
18 **TERMINATED SINGLE-EMPLOYER PLANS.**

19 (a) **AMENDMENTS OF ERISA.**—

20 (1) **IN GENERAL.**—Part 3 of subtitle A of title  
21 I of the Employee Retirement Income Security Act  
22 of 1974 (29 U.S.C. 1081 et seq.), as amended by  
23 this Act, is amended by adding at the end the fol-  
24 lowing new section:



1           “(B) the restrictions under subsection (a)  
2           which apply during the restricted period to the  
3           plan sponsor and any member of a controlled  
4           group which includes such sponsor.

5           “(2) NOTICE OF EXISTENCE OF, AND TRANS-  
6           FERS TO, NONQUALIFIED DEFERRED COMPENSATION  
7           PLANS.—

8           “(A) INITIAL NOTICE.—Within 30 days of  
9           receipt of a notice under paragraph (1), each  
10          plan sponsor shall notify the plan administrator  
11          of the plan described in subsection (a)(1)—

12           “(i) of nonqualified deferred com-  
13           pensation plans maintained by the plan  
14           sponsor or any member of a controlled  
15           group which includes such sponsor, and

16           “(ii) the amount of any assets trans-  
17           ferred or otherwise reserved by the plan  
18           sponsor or such member in violation of  
19           subsection (a) during any portion of the  
20           restricted period occurring on or before the  
21           date the plan sponsor provides such notice.

22           “(B) ADDITIONAL NOTICES.—If, after the  
23           date on which notice is provided under subpara-  
24           graph (A) and during any portion of the re-  
25           maining restricted period specified in the notice

1 provided under paragraph (1), the plan sponsor  
2 of a plan described in subsection (a)(1) or a  
3 member of a controlled group which includes  
4 such sponsor—

5 “(i) transfers or reserves assets in vio-  
6 lation of subsection (a), or

7 “(ii) establishes a new nonqualified  
8 deferred compensation plan,

9 the plan sponsor shall notify the plan adminis-  
10 trator of the plan described in subsection (a)(1)  
11 of such transfer, reservation, or establishment  
12 within 3 days of the date of such action.

13 “(3) ACCESS TO FINANCIAL DATA.—Any fidu-  
14 ciary of the plan shall have access to the financial  
15 records of a plan sponsor or any member of a con-  
16 trolled group which includes such sponsor to deter-  
17 mine if assets were transferred or otherwise reserved  
18 in violation of this section.

19 “(c) RESTRICTED PERIOD.—For purposes of this  
20 section, the term ‘restricted period’ means, with respect  
21 to any plan described in subsection (a)(1)—

22 “(1) any prohibited period determined under  
23 subparagraph (A) or (B) of section 305(c)(3), except  
24 that in making such determination—

1           “(A) both subsection (c)(1) and (c)(3)(A)  
2           of section 305 shall be applied by substituting  
3           ‘80 percent’ for ‘60 percent’ each place it ap-  
4           pears, and

5           “(B) section 305(c)(5) shall apply.

6           “(2) the 12-month period beginning on the date  
7           which is 6 months before the termination date of the  
8           plan if, as of the termination date, the plan is not  
9           sufficient for benefit liabilities (within the meaning  
10          of section 4041).

11          “(d) NONQUALIFIED DEFERRED COMPENSATION  
12          PLAN.—For purposes of this section—

13                 “(1) IN GENERAL.—The term ‘nonqualified de-  
14                 ferred compensation plan’ means any plan that pro-  
15                 vides for the deferral of compensation, other than—

16                         “(A) a qualified employer plan, and

17                         “(B) any bona fide vacation leave, sick  
18                         leave, compensatory time, disability pay, or  
19                         death benefit plan.

20                 “(2) QUALIFIED EMPLOYER PLAN.—The term  
21                 ‘qualified employer plan’ means—

22                         “(A) any plan, contract, pension, account,  
23                         or trust described in subparagraph (A) or (B)  
24                         of section 219(g)(5) of the Internal Revenue

1 Code of 1986 (without regard to subparagraph  
2 (A)(iii)),

3 “(B) any eligible deferred compensation  
4 plan (within the meaning of section 457(b) of  
5 such Code), and

6 “(C) any plan described in section 415(m)  
7 of such Code.

8 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—  
9 The term ‘plan’ includes any agreement or arrange-  
10 ment, including an agreement or arrangement that  
11 includes one person.

12 “(e) OTHER DEFINITIONS.—For purposes of this  
13 section—

14 “(1) APPLICABLE COVERED EMPLOYEE.—

15 “(A) IN GENERAL.—The term ‘applicable  
16 covered employee’ mean any—

17 “(i) covered employee of a plan spon-  
18 sor,

19 “(ii) covered employee of a member of  
20 a controlled group which includes the plan  
21 sponsor, and

22 “(iii) former employee who was a cov-  
23 ered employee at the time of termination of  
24 employment with the plan sponsor or a

1 member of a controlled group which in-  
2 cludes the plan sponsor.

3 “(B) COVERED EMPLOYEE.—The term  
4 ‘covered employee’ has the meaning given such  
5 term by section 162(m)(3) of the Internal Rev-  
6 enue Code of 1986.

7 “(2) CONTROLLED GROUP.—The term ‘con-  
8 trolled group’ has the meaning given such term by  
9 section 302(f)(3).”.

10 (2) ENFORCEMENT.—

11 (A) IN GENERAL.—Section 502(a) of the  
12 Employee Retirement Income Security Act (29  
13 U.S.C. 1132(a)) is amended—

14 (i) by striking “or” at the end of  
15 paragraph (8), by striking the period at  
16 the end of paragraph (9) and inserting “;  
17 or”, and by adding at the end the following  
18 new paragraph:

19 “(10) by a fiduciary of a defined benefit plan  
20 which is a single-employer plan against—

21 “(A) a plan sponsor, a member of a con-  
22 trolled group which includes the plan sponsor,  
23 an applicable covered employee, or a person  
24 holding assets which are part of a nonqualified

1 deferred compensation plan to recover on behalf  
2 of the plan—

3 “(i) assets which were set aside or  
4 transferred in violation of section 306 (and  
5 any earnings properly allocable to the as-  
6 sets); or

7 “(ii) amounts equivalent to the assets  
8 and earnings described in clause (i); or

9 “(B) a plan sponsor, or a member of a  
10 controlled group which includes the plan spon-  
11 sor, to compel the production of records the fi-  
12 duciary is entitled to under section 306.”; and

13 (ii) by adding at the end the following  
14 new flush sentence:

15 “For purposes of paragraph (10), any term used in such  
16 paragraph which is also used in section 306 shall have  
17 the meaning given such term by section 306.”.

18 (B) MANDATORY AWARDING OF FEES.—

19 Section 502(g) of such Act (29 U.S.C. 1132(g))  
20 is amended by adding at the end the following  
21 new paragraph:

22 “(3) ACTIONS TO RECOVER ASSETS TRANS-  
23 FERRED TO NONQUALIFIED DEFERRED COMPENSA-  
24 TION PLANS.—If, in any action under subsection  
25 (a)(10) by a fiduciary for or on behalf of a plan to

1 enforce section 306, a judgement is awarded in favor  
 2 of the plan, the court shall, in addition to any other  
 3 amount, award the plan reasonable attorney's fees  
 4 and costs of the action, to be paid by the defend-  
 5 ant”.

6 (3) CLERICAL AMENDMENT.—The table of con-  
 7 tents in section 1 of such Act, as amended by this  
 8 Act, is amended by adding at the end the following  
 9 new item:

“Sec. 306. Restrictions on funding of nonqualified deferred compensation  
 plans.”.

10 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

11 (1) IN GENERAL.—Subsection (b) of section  
 12 409A of the Internal Revenue Code of 1986 (pro-  
 13 viding rules relating to funding) is amended by re-  
 14 designating paragraphs (3) and (4) as paragraphs  
 15 (4) and (5), respectively, and by inserting after  
 16 paragraph (2) the following new paragraph:

17 “(3) EMPLOYERS OF UNDERFUNDED OR TERMI-  
 18 NATED DEFINED BENEFIT PLANS.—If, during any  
 19 restricted period—

20 “(A) a plan sponsor of a defined benefit  
 21 plan which is a single-employer plan, or

22 “(B) any member of a controlled group  
 23 which includes such sponsor,

1 directly or indirectly transfers assets, or directly or  
2 indirectly otherwise reserves assets, in a trust (or  
3 other arrangement determined by the Secretary) for  
4 purposes of paying deferred compensation of an ap-  
5 plicable covered employee under a nonqualified de-  
6 ferred compensation plan of the plan sponsor or  
7 member, such assets shall for purposes of section 83  
8 be treated as property transferred in connection with  
9 the performance of services whether or not such as-  
10 sets are available to satisfy claims of general credi-  
11 tors. For purposes of this paragraph, any term used  
12 in this paragraph which is also used in section  
13 4980K(h) shall have the meaning given such term  
14 by such section.”.

15 (2) REQUIREMENT TO PROVIDE NOTICE OF  
16 EVENT RESULTING IN RESTRICTED PERIOD.—

17 (A) IN GENERAL.—Section 4980K of the  
18 Internal Revenue Code of 1986 (as amended by  
19 section 403) is amended—

20 (i) in subsection (a), by striking “sub-  
21 section (e), (f), or (g)” and inserting “sub-  
22 section (e), (f), (g), or (h)”;

23 (ii) by amending subsection (b)(1) to  
24 read as follows:

1           “(1) AMOUNT OF TAX.—The amount of tax im-  
2           posed by subsection (a) on any failure—

3                   “(A) under subsection (e), (f), or (g) with  
4                   respect to any participant or beneficiary shall  
5                   be \$100 for each day in the noncompliance pe-  
6                   riod with respect to the failure; and

7                   “(B) under subsection (h) shall be \$1000  
8                   for each day in the noncompliance period with  
9                   respect to the failure.”;

10                   (iii) in subsection (c)—

11                           (I) by striking “subsection (e),  
12                           (f), or (g)” each place it appears and  
13                           inserting “subsection (e), (f), (g), or  
14                           (h)”; and

15                           (II) in paragraph (3)(C), by  
16                           striking “(f) and (g)” and inserting  
17                           “(f), (g), and (h)”; and

18                           (iv) by adding at the end the fol-  
19                   lowing:

20                   “(h) REQUIREMENT TO PROVIDE NOTICE OF EVENT  
21           RESULTING IN RESTRICTED PERIOD.—

22                   “(1) IN GENERAL.—A plan administrator of a  
23                   defined benefit plan which is a single-employer plan  
24                   shall provide to each plan sponsor of the plan within  
25                   a reasonable period of time after the occurrence of

1 an event which results in a restricted period with re-  
2 spect to plan a notice that includes—

3 “(A) information as to the duration of the  
4 restricted period, and

5 “(B) the restrictions under section 306 of  
6 the Employee Retirement Income Security Act  
7 of 1974 and section 409A(b)(3) during the re-  
8 stricted period.

9 “(2) NOTICE OF EXISTENCE OF, AND TRANS-  
10 FERS TO, NONQUALIFIED DEFERRED COMPENSATION  
11 PLANS.—

12 “(A) INITIAL NOTICE.—Within 30 days of  
13 receipt of a notice under paragraph (1), each  
14 plan sponsor shall notify the plan administrator  
15 of the plan—

16 “(i) of nonqualified deferred com-  
17 pensation plans maintained by the plan  
18 sponsor or any member of a controlled  
19 group which includes such sponsor, and

20 “(ii) the amount of any assets trans-  
21 ferred or otherwise reserved by the plan  
22 sponsor or such member in violation of sec-  
23 tion 306 of such Act or section 409A(b)(3)  
24 during any portion of the restricted period

1           occurring on or before the date the plan  
2           sponsor provides such notice.

3           “(B) ADDITIONAL NOTICES.—If, after the  
4           date on which notice is provided under subpara-  
5           graph (A) and during any portion of the re-  
6           maining restricted period specified in the notice  
7           provided under paragraph (1), the plan sponsor  
8           of a defined benefit plan which is a single-em-  
9           ployer plan or a member of a controlled group  
10          which includes such sponsor—

11                   “(i) transfers or reserves assets in vio-  
12                   lation of section 306 of such Act or section  
13                   409A(b)(3), or

14                   “(ii) establishes a new nonqualified  
15                   deferred compensation plan,

16          the plan sponsor shall notify the plan adminis-  
17          trator of the plan of such transfer, reservation,  
18          or establishment within 3 days of the date of  
19          such action.

20          “(3) ACCESS TO FINANCIAL DATA.—Any fidu-  
21          ciary of the plan shall have access to the financial  
22          records of a plan sponsor or any member of a con-  
23          trolled group which includes such sponsor to deter-  
24          mine if assets were transferred or otherwise reserved

1 in violation of section 306 of such Act or section  
2 409A(b)(3).

3 “(4) FORM AND MANNER.—The Secretary may  
4 prescribe the form and manner of a notice required  
5 under this section. Such a notice shall be written in  
6 a manner calculated to be understood by the average  
7 plan participant and may be delivered in written,  
8 electronic, or other appropriate form to the extent  
9 that such form is reasonably accessible to the recipi-  
10 ent.

11 “(5) DEFINITIONS.—For purposes of this para-  
12 graph, any term used in this subsection which is also  
13 used in section 306 of such Act shall have the mean-  
14 ing given such term by such section.”.

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

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to transfers or other reservation  
23 of assets after December 31, 2006.

1 **SEC. 334. SPECIAL FUNDING RULES FOR PLANS MAIN-**  
2 **TAINED BY COMMERCIAL AIRLINES THAT**  
3 **ARE AMENDED TO CEASE FUTURE BENEFIT**  
4 **ACCRUALS.**

5 (a) IN GENERAL.—If an eligible plan elects to have  
6 this section apply—

7 (1) in the case of any applicable plan year be-  
8 ginning before January 1, 2007, the plan shall not  
9 have an accumulated funding deficiency for purposes  
10 of sections 412 and 4971 of the Internal Revenue  
11 Code of 1986 and section 302 of the Employee Re-  
12 tirement Income Security Act of 1974 if contribu-  
13 tions to the plan for the plan year are not less than  
14 the minimum required contribution determined  
15 under subsection (d) for the plan for the plan year,  
16 and

17 (2) in the case of any applicable plan year be-  
18 ginning on or after January 1, 2007, the minimum  
19 required contribution determined under section 430  
20 of such Code and 303 of such Act shall, for purposes  
21 of sections 412, 430, and 4971 of such Code and  
22 sections 302 and 303 of such Act, be equal to the  
23 minimum required contribution determined under  
24 subsection (d) for the plan for the plan year.

25 (b) ELIGIBLE PLAN.—For purposes of this section—

1           (1) IN GENERAL.—The term “eligible plan”  
2 means a defined benefit plan (other than a multiem-  
3 ployer plan) to which section 412 of such Code and  
4 302 of such Act applies—

5           (A) which is sponsored by an employer  
6 which is a commercial passenger airline, and

7           (B) with respect to which the requirements  
8 of paragraphs (2) and (3) are met.

9           (2) ACCRUAL RESTRICTIONS.—The require-  
10 ments of this paragraph are met if, effective as of  
11 the first day of the first applicable plan year and at  
12 all times thereafter, the plan provides that—

13           (A) the accrued benefit, any death or dis-  
14 ability benefit, and any social security supple-  
15 ment described in the last sentence of section  
16 411(a)(9) of such Code and section  
17 204(b)(1)(G) of such Act, of each participant  
18 are frozen at the amount of such benefit or  
19 supplement immediately before such first day,  
20 and

21           (B) all other benefits under the plan are  
22 eliminated,

23 but only to the extent the freezing or elimination of  
24 such benefits would have been permitted under sec-  
25 tion 411(d)(6) of such Code and section 204(g) of

1 such Act if they had been implemented by a plan  
2 amendment adopted immediately before such first  
3 day.

4 (3) RESTRICTION ON APPLICABLE BENEFIT IN-  
5 CREASES.—The requirements of this paragraph are  
6 met if no applicable benefit increase (as defined in  
7 section 436(b)(3) of such Code and section  
8 305(b)(3) of such Act, but determined without re-  
9 gard to subparagraph (B) or (C) thereof) takes ef-  
10 fect at any time during the period beginning on July  
11 26, 2005, and ending on the day before the first day  
12 of the first applicable plan year.

13 (c) ELECTIONS AND RELATED TERMS.—

14 (1) IN GENERAL.—A plan sponsor shall make  
15 the election under subsection (a) at such time and  
16 in such manner as the Secretary of the Treasury  
17 may prescribe. Such election, once made, may be re-  
18 voked only with the consent of the Secretary.

19 (2) YEARS FOR WHICH ELECTION MADE.—

20 (A) IN GENERAL.—The plan sponsor may  
21 select the first plan year to which the election  
22 under subsection (a) applies from among plan  
23 years ending after the date of the election. The  
24 election shall apply to such plan year and all  
25 subsequent years.

1 (B) ELECTION OF NEW PLAN YEAR.—The  
2 plan sponsor may specify a new plan year in the  
3 election under subsection (a) and the plan year  
4 of the plan may be changed to such new plan  
5 year without the approval of the Secretary of  
6 the Treasury.

7 (3) APPLICABLE PLAN YEAR.—The term “ap-  
8 plicable plan year” means each plan year to which  
9 the election under subsection (a) applies under para-  
10 graph (1).

11 (d) MINIMUM REQUIRED CONTRIBUTION.—

12 (1) IN GENERAL.—In the case of any applicable  
13 plan year during the amortization period, the min-  
14 imum required contribution shall be the amount nec-  
15 essary to amortize the unfunded liability of the plan,  
16 determined as of the first day of the plan year, in  
17 equal annual installments (until fully amortized)  
18 over the remainder of the amortization period. Such  
19 amount shall be separately determined for each ap-  
20 plicable plan year.

21 (2) YEARS AFTER AMORTIZATION PERIOD.—In  
22 the case of any plan year beginning after the close  
23 of the amortization period, section 412(a)(2)(A) of  
24 such Code and section 302(a)(2)(A) of such Act  
25 shall apply to such plan, but the prefunding balance

1 as of the first day of the first plan year beginning  
2 after the close of the amortization period under sec-  
3 tion 430(e) of such Code and section 303(e) of such  
4 Act shall be zero.

5 (3) DEFINITIONS.—For purposes of this sec-  
6 tion—

7 (A) UNFUNDED LIABILITY.—The term  
8 “unfunded liability” means the unfunded ac-  
9 crued liability under the plan, determined under  
10 the unit credit funding method.

11 (B) AMORTIZATION PERIOD.—The term  
12 “amortization period” means the 14-plan year  
13 period beginning with the first applicable plan  
14 year.

15 (4) OTHER RULES.—In determining the min-  
16 imum required contribution and amortization  
17 amount under this subsection—

18 (A) the provisions of section 412(c)(3) of  
19 such Code and section 302(c)(3) of such Act, as  
20 in effect before the date of enactment of this  
21 section, shall apply,

22 (B) the rate of interest under section  
23 412(b)(5)(A) of such Code and section  
24 302(b)(5)(A) of such Act, as so in effect, shall

1 be used for all calculations requiring an interest  
2 rate, and

3 (C) the value of plan assets shall be equal  
4 to their fair market value.

5 (e) FUNDING STANDARD ACCOUNT AND  
6 PREFUNDING BALANCE.—Any amortization bases or  
7 credit balances in the funding standard account under sec-  
8 tion 412 of such Code or section 302 of such Act, and  
9 any prefunding balance under section 430 of such Code  
10 or section 303 of such Act, as of the day before the first  
11 day of the first applicable plan year, shall be reduced to  
12 zero.

13 (f) AMENDMENTS TO OTHER PROVISIONS.—

14 (1) QUALIFICATION REQUIREMENT.—Section  
15 401(a) of the Internal Revenue Code of 1986, as  
16 amended by this Act, is amended by inserting after  
17 paragraph (33) the following new paragraph:

18 “(34) SUCCESSOR PLANS TO CERTAIN PLANS.—  
19 If a plan to which section 334 of the National Em-  
20 ployee Savings and Trust Equity Guarantee Act of  
21 2005 applies is maintained by an employer that es-  
22 tablishes or maintains 1 or more other defined ben-  
23 efit plans (other than any multiemployer plan), and  
24 such other plans in combination provide benefit ac-  
25 cruals to any substantial number of successor em-

1 employees, the Secretary may, in the Secretary’s discre-  
2 tion, determine that any trust of which any other  
3 such plan is a part does not constitute a qualified  
4 trust under this subsection unless all benefit obliga-  
5 tions of the plan to which section 334 of the Na-  
6 tional Employee Savings and Trust Equity Guar-  
7 antee Act of 2005 applies have been satisfied. For  
8 purposes of this paragraph, the term ‘successor em-  
9 ployee’ means any employee who is or was covered  
10 by the plan to which section 334 of the National  
11 Employee Savings and Trust Equity Guarantee Act  
12 of 2005 applies and any employee who performs sub-  
13 stantially the same type of work with respect to the  
14 same business operations as an employee covered by  
15 such plan.”

16 (2) PBGC LIABILITY LIMITED.—Section 4022  
17 of the Employee Retirement Income Security Act of  
18 1974, as amended by this Act, is amended by adding  
19 at the end the following new subsection:

20 “(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN  
21 FUNDING REQUIREMENTS.—If any plan makes an elec-  
22 tion under section 334 of the National Employee Savings  
23 and Trust Equity Guarantee Act of 2005, then this sec-  
24 tion and section 4044(a)(3) shall be applied by treating

1 the first day of the first applicable plan year as the termi-  
2 nation date of the plan.”

3           (3) LIMITATION ON DEDUCTIONS UNDER CER-  
4 TAIN PLANS.—Section 404(a)(7)(C)(iv) of the Inter-  
5 nal Revenue Code of 1986, as added by this Act, is  
6 amended by adding at the end the following new  
7 sentence: “This clause shall not apply to any plan  
8 for a plan year if an election under section 334 of  
9 the National Employee Savings and Trust Equity  
10 Guarantee Act of 2005 is in effect for such year.”

11           (4) NOTICE.—In the case of a plan amendment  
12 adopted in order to comply with this section, any no-  
13 tice required under section 4980F(e) of such Code  
14 or section 204(h) of such Act shall be subject to the  
15 timing rules applicable to multiemployer plans under  
16 Treasury Regulation section 54.4980F-1 Q/A-9 (or  
17 any successor provision). This subsection shall not  
18 apply to any plan unless such plan is maintained  
19 pursuant to one or more collective bargaining agree-  
20 ments between employee representatives and one or  
21 more employers.

22           (g) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to plan years ending after the date  
24 of the enactment of this Act.

1 **SEC. 335. MODIFICATION OF PENSION FUNDING REQUIRE-**  
2 **MENTS FOR PLANS SUBJECT TO CURRENT**  
3 **TRANSITION RULE.**

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

9 (b) **PLAN YEARS AFTER NEW FUNDING RULES.—**

10 (1) **IN GENERAL.—**In the case of a plan that—

11 (A) was not required to pay a variable rate  
12 premium for the plan year beginning in 1996,

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

18 (C) is sponsored by a company that is en-  
19 gaged primarily in the interurban or interstate  
20 passenger bus service,

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

23 (2) **MODIFIED RULES.—**The rules described in  
24 this subsection are as follows:

25 (A) For purposes of—

1 (i) determining unfunded target liabil-  
2 ity under section 4006(a)(3)(E)(ii) of the  
3 Employee Retirement Income Security Act  
4 of 1974, and

5 (ii) determining any present value or  
6 making any computation under section 412  
7 of the Internal Revenue Code of 1986 or  
8 section 302 of such Act,

9 the mortality table shall be the mortality table used  
10 by the plan.

11 (B) Notwithstanding section 303(e)(3) of  
12 such Act or 430(e)(3) of such Code, for pur-  
13 poses of section 303(c)(2)(B) of such Act and  
14 430(c)(2)(B) of such Code, the value of plan  
15 assets shall not be reduced by the amount of  
16 the prefunding balance if, pursuant to a binding  
17 written agreement with the Pension Benefit  
18 Guaranty Corporation entered into before Janu-  
19 ary 1, 2006, the prefunding balance is not  
20 available to reduce the minimum required con-  
21 tribution for the plan year.

22 (3) DEFINITIONS.—Any term used in this sec-  
23 tion which is also used in section 303 of such Act  
24 or section 430 of such Code shall have the meaning  
25 provided such term in such section.

1           (4) CONFORMING AMENDMENT.—Section 769  
2 of the Retirement Protection Act of 1994 is amend-  
3 ed by striking subsection (c).

4           (5) EFFECTIVE DATE.—The amendments made  
5 by this subsection shall apply to plan years begin-  
6 ning after 2006.

## 7           **Subtitle C—Other Provisions**

### 8   **SEC. 341. TREATMENT OF CASH BALANCE AND OTHER HY-** 9           **BRID DEFINED BENEFIT PENSION PLANS.**

10          (a) APPLICATION OF AGE DISCRIMINATION PROHIBI-  
11 TIONS.—

12           (1) AMENDMENT OF INTERNAL REVENUE  
13 CODE.—Section 411(b) of the Internal Revenue  
14 Code of 1986 (relating to accrued benefit require-  
15 ments) is amended by adding at the end the fol-  
16 lowing:

17           “(5) SPECIAL RULE FOR CASH BALANCE AND  
18 OTHER HYBRID DEFINED BENEFIT PLANS.—

19           “(A) IN GENERAL.—A qualified cash bal-  
20 ance plan shall not be treated as violating the  
21 requirements of paragraph (1)(H) merely be-  
22 cause it may reasonably be expected that the  
23 period over which interest credits will be made  
24 to a participant’s accumulation account (or its  
25 equivalent) is longer for a younger participant.

1 This paragraph shall not apply to any plan if  
2 the rate of any pay credit or interest credit to  
3 such an account under the plan decreases by  
4 reason of the participant's attainment of any  
5 age.

6 “(B) QUALIFIED CASH BALANCE PLAN.—

7 For purposes of this paragraph—

8 “(i) IN GENERAL.—The term ‘quali-  
9 fied cash balance plan’ means a cash bal-  
10 ance plan which meets the vesting require-  
11 ment under clause (ii) and the interest  
12 credit requirement under clause (iii).

13 “(ii) VESTING REQUIREMENTS.—A  
14 plan meets the requirements of this clause  
15 if an employee who has completed at least  
16 3 years of service has a nonforfeitable  
17 right to 100 percent of the employee's ac-  
18 crued benefit derived from employer con-  
19 tributions.

20 “(iii) INTEREST CREDITS.—A plan  
21 meets the requirements of this clause if the  
22 terms of the plan provide that any interest  
23 credit (or equivalent amount) for any plan  
24 year shall be at a rate which—

1           “(I) is not less than the applica-  
2           ble Federal mid-term interest rate (as  
3           determined under section 1274(d)(1)),  
4           and

5           “(II) is not greater than the  
6           greater of the rate determined under  
7           subclause (I) or a rate equal to the  
8           rate of interest on amounts invested  
9           conservatively in long-term investment  
10          grade corporate bonds.

11          “(iv) DETERMINATION OF RATES.—  
12          For purposes of clause (iii)(II), the rate of  
13          interest on amounts invested conservatively  
14          in long-term investment grade corporate  
15          bonds shall be determined by the Secretary  
16          on the basis of 2 or more indices that are  
17          selected periodically by the Secretary. The  
18          Secretary shall make publicly available the  
19          indices and methodology used to determine  
20          the rate.

21          “(v) VARIABLE RATE OF INTEREST.—  
22          If the interest credit rate under the plan is  
23          a variable rate, the plan shall provide that,  
24          upon the termination of the plan, the rate  
25          of interest used to determine accrued bene-

1 fits under the plan shall be equal to the av-  
2 erage of the rates of interest used under  
3 the plan during the 5-year period ending  
4 on the termination date.

5 “(C) CASH BALANCE PLAN.—For purposes  
6 of this paragraph, the term ‘cash balance plan’  
7 means a defined benefit plan under which—

8 “(i) the accrued benefit is determined  
9 by reference to the balance of a hypo-  
10 thetical accumulation account, and

11 “(ii) pay credits and interest credits  
12 are credited to such account.

13 “(D) REGULATIONS TO INCLUDE SIMILAR  
14 OR OTHER HYBRID PLANS.—

15 “(i) CASH BALANCE PLAN.—The Sec-  
16 retary shall issue regulations which include  
17 in the definition of cash balance plan any  
18 defined benefit plan (or any portion of  
19 such a plan) which has an effect similar to  
20 a cash balance plan. Such regulations may  
21 provide that if a plan sponsor represents in  
22 communications to participants and bene-  
23 ficiaries that a plan amendment results in  
24 a plan being described in the preceding

1 sentence, such plan shall be treated as a  
2 cash balance plan.

3 “(ii) QUALIFIED CASH BALANCE  
4 PLAN.—The Secretary may in the regula-  
5 tions issued under clause (i) provide for  
6 the treatment of a cash balance plan as a  
7 qualified cash balance plan in cases where  
8 the cash balance plan has an effect similar  
9 to a qualified cash balance plan.”.

10 (2) AMENDMENT OF ERISA.—Section 204(b) of  
11 the Employee Retirement Income Security Act of  
12 1974 (29 U.S.C. 1054(b)) is amended by adding at  
13 the end the following:

14 “(5) SPECIAL RULE FOR CASH BALANCE AND  
15 OTHER HYBRID DEFINED BENEFIT PLANS.—

16 “(A) IN GENERAL.—A qualified cash bal-  
17 ance plan shall not be treated as violating the  
18 requirements of paragraph (1)(H) merely be-  
19 cause it may reasonably be expected that the  
20 period over which interest credits will be made  
21 to a participant’s accumulation account (or its  
22 equivalent) is longer for a younger participant.  
23 This paragraph shall not apply to any plan if  
24 the rate of any pay credit or interest credit to  
25 such an account under the plan decreases by

1 reason of the participant's attainment of any  
2 age.

3 “(B) QUALIFIED CASH BALANCE PLAN.—

4 For purposes of this paragraph—

5 “(i) IN GENERAL.—The term ‘quali-  
6 fied cash balance plan’ means a cash bal-  
7 ance plan which meets the vesting require-  
8 ment under clause (ii) and the interest  
9 credit requirement under clause (iii).

10 “(ii) VESTING REQUIREMENTS.—A  
11 plan meets the requirements of this clause  
12 if an employee who has completed at least  
13 3 years of service has a nonforfeitable  
14 right to 100 percent of the employee's ac-  
15 crued benefit derived from employer con-  
16 tributions.

17 “(iii) INTEREST CREDITS.—A plan  
18 meets the requirements of this clause if the  
19 terms of the plan provide that any interest  
20 credit (or equivalent amount) for any plan  
21 year shall be at a rate which—

22 “(I) is not less than the applica-  
23 ble Federal mid-term interest rate (as  
24 determined under section 1274(d)(1)

1 of the Internal Revenue Code of  
2 1986), and

3 “(II) is not greater than the  
4 greater of the rate determined under  
5 subclause (I) or a rate equal to the  
6 rate of interest on amounts invested  
7 conservatively in long-term investment  
8 grade corporate bonds.

9 “(iv) DETERMINATION OF RATES.—  
10 For purposes of clause (iii)(II), the rate of  
11 interest on amounts invested conservatively  
12 in long-term investment grade corporate  
13 bonds shall be determined by the Secretary  
14 of the Treasury on the basis of 2 or more  
15 indices that are selected periodically by the  
16 Secretary of the Treasury. The Secretary  
17 of the Treasury shall make publicly avail-  
18 able the indices and methodology used to  
19 determine the rate.

20 “(v) VARIABLE RATE OF INTEREST.—  
21 If the interest credit rate under the plan is  
22 a variable rate, the plan shall provide that,  
23 upon the termination of the plan, the rate  
24 of interest used to determine accrued bene-  
25 fits under the plan shall be equal to the av-

1           erage of the rates of interest used under  
2           the plan during the 5-year period ending  
3           on the termination date.

4           “(C) CASH BALANCE PLAN.—For purposes  
5           of this paragraph, the term ‘cash balance plan’  
6           means a defined benefit plan under which—

7                   “(i) the accrued benefit is determined  
8                   by reference to the balance of a hypo-  
9                   thetical accumulation account, and

10                   “(ii) pay credits and interest credits  
11                   are credited to such account.

12           “(D) REGULATIONS TO INCLUDE SIMILAR  
13           OR OTHER HYBRID PLANS.—

14                   “(i) CASH BALANCE PLAN.—The Sec-  
15                   retary of the Treasury shall issue regula-  
16                   tions which include in the definition of  
17                   cash balance plan any defined benefit plan  
18                   (or any portion of such a plan) which has  
19                   an effect similar to a cash balance plan.  
20                   Such regulations may provide that if a  
21                   plan sponsor represents in communications  
22                   to participants and beneficiaries that a  
23                   plan amendment results in a plan being  
24                   described in the preceding sentence, such

1 plan shall be treated as a cash balance  
2 plan.

3 “(ii) QUALIFIED CASH BALANCE  
4 PLAN.—The Secretary of the Treasury  
5 may in the regulations issued under clause  
6 (i) provide for the treatment of a cash bal-  
7 ance plan as a qualified cash balance plan  
8 in cases where the cash balance plan has  
9 an effect similar to a qualified cash bal-  
10 ance plan.”.

11 (b) RULES APPLICABLE TO ACCRUED BENEFITS  
12 UNDER CONVERTED PLANS.—

13 (1) AMENDMENT OF INTERNAL REVENUE  
14 CODE.—Section 411(d) of the Internal Revenue  
15 Code of 1986 (relating to special rules) is amended  
16 by adding at the end the following new paragraph:

17 “(7) TREATMENT OF CONVERSIONS TO CASH  
18 BALANCE OR OTHER HYBRID PLANS.—

19 “(A) IN GENERAL.—For purposes of para-  
20 graph (6)(A), an applicable plan amendment  
21 shall be treated as reducing the accrued benefit  
22 of a participant if, under the terms of the plan  
23 as in effect after the amendment, the accrued  
24 benefit of any participant who was a participant  
25 as of the effective date of the amendment may

1 at any time be less than the accrued benefit de-  
2 termined under the method under subparagraph  
3 (B), (C), or (D) which is specified in the plan  
4 and applies uniformly to all participants. An  
5 applicable plan amendment shall in no event be  
6 treated as meeting the requirements of any  
7 such subparagraph if the conversion described  
8 in subparagraph (G)(i) is into a cash balance  
9 plan other than a qualified cash balance plan  
10 (as defined in subsection (b)(5)(B)).

11 “(B) NO WEARAWAY.—

12 “(i) IN GENERAL.—The accrued ben-  
13 efit determined under this subparagraph is  
14 the sum of—

15 “(I) the participant’s accrued  
16 benefit for years of service before the  
17 effective date of the amendment, de-  
18 termined under the terms of the plan  
19 as in effect before the amendment,  
20 plus

21 “(II) except as provided in clause  
22 (ii), the participant’s accrued benefit  
23 for years of service after the effective  
24 date of the amendment, determined

1 under the terms of the plan as in ef-  
2 fect after the amendment.

3 “(ii) REQUIRED AMOUNTS FOR CER-  
4 TAIN PERIODS.—Notwithstanding clause  
5 (i)(II), the plan shall provide that either—

6 “(I) the accrued benefit of all  
7 participants for each of the first 5  
8 plan years to which the amendment  
9 applies shall be equal to the greater of  
10 the accrued benefit determined under  
11 the terms of the plan as in effect both  
12 before and after the amendment, or

13 “(II) the accrued benefit for peri-  
14 ods after the effective date of the  
15 amendment of all participants who, as  
16 of the effective date of the amend-  
17 ment, had attained the age of 40 and  
18 had a combined age and years of serv-  
19 ice under the plan of not less than 55  
20 shall be determined under either of  
21 the methods described in clause (iii)  
22 which is selected by the plan and  
23 which is specified in the amendment.

1           “(iii) APPLICABLE METHOD.—For  
2 purposes of clause (ii)(II), the plan shall  
3 select 1 of the following methods:

4           “(I) The accrued benefit shall be  
5 equal to the greater of the accrued  
6 benefit determined under the terms of  
7 the plan as in effect both before and  
8 after the amendment.

9           “(II) At the election of the par-  
10 ticipant, the accrued benefit shall be  
11 determined under the terms of the  
12 plan as in effect either before or after  
13 the amendment.

14           “(C) GREATER OF OLD OR NEW OR ELEC-  
15 TION OF EITHER.—The accrued benefit deter-  
16 mined under this subparagraph is the accrued  
17 benefit determined under 1 of the following  
18 methods which is selected by the plan and  
19 which is specified in the amendment:

20           “(i) The accrued benefit shall be equal  
21 to the greater of the accrued benefit deter-  
22 mined under the terms of the plan as in ef-  
23 fect both before and after the amendment.

24           “(ii) At the election of the participant,  
25 the accrued benefit shall be determined

1           under the terms of the plan as in effect ei-  
2           ther before or after the amendment.

3           “(D) METHOD PRESCRIBED BY SEC-  
4           RETARY.—The accrued benefit determined  
5           under this subparagraph shall be determined  
6           under regulations prescribed by the Secretary  
7           which require a plan to provide a credit of addi-  
8           tional amounts or increases in initial account  
9           balances in amounts substantially equivalent to  
10          the benefits that would be required to be pro-  
11          vided to meet the requirements of subpara-  
12          graphs (B) or (C).

13          “(E) INCLUSION OF PRIOR ACCRUED BEN-  
14          EFIT INTO INITIAL ACCOUNT BALANCE.—

15                 “(i) IN GENERAL.—If, for purposes of  
16                 subparagraphs (B), (C), or (D), an appli-  
17                 cable plan amendment provides that an  
18                 amount will be initially credited to a par-  
19                 ticipant’s accumulation account (or its  
20                 equivalent) on the effective date of the  
21                 amendment with respect to the partici-  
22                 pant’s accrued benefit for periods before  
23                 such date, the requirements of such sub-  
24                 paragraph shall be treated as met with re-  
25                 spect to such accrued benefit if the amount

1 initially credited is not less than the  
2 present value of the participant's accrued  
3 benefit determined by using the applicable  
4 mortality table and the lower of the appli-  
5 cable interest rate under section  
6 417(e)(3)(A), or the interest rate used to  
7 credit interest under the plan, as of such  
8 date.

9 “(ii) ADJUSTMENTS FOR CERTAIN  
10 SUBSIDIZED BENEFITS.—For purposes of  
11 subparagraph (B), if any early retirement  
12 benefit or retirement-type subsidy (within  
13 the meaning of paragraph (6)(B)(i)) is not  
14 included in the initial account balance  
15 under clause (i), the plan shall credit the  
16 accumulation account with the amount of  
17 such benefit or subsidy for the plan year in  
18 which the participant retires if, as of such  
19 time, the participant has met the age,  
20 years of service, and other requirements  
21 under the plan for entitlement to such ben-  
22 efit or subsidy.

23 “(F) REQUIREMENTS WHERE PARTICIPANT  
24 OFFERED CHOICE.—If a plan provides a partici-  
25 pant with an election described in subparagraph

1 (B)(iii)(II) or (C)(ii), the following rules shall  
2 apply:

3 “(i) NOTICE.—The plan shall not be  
4 treated as meeting the requirements of ei-  
5 ther such subparagraph unless the plan  
6 provides the participant a notice of the  
7 right to make such election which includes  
8 information (meeting such requirements as  
9 may be prescribed by the Secretary)—

10 “(I) by which the participant  
11 may project benefits under the for-  
12 mulas from which the participant may  
13 choose and may model the impact of  
14 any such choice, and

15 “(II) with respect to cir-  
16 cumstances under which a participant  
17 may not receive the projected accrued  
18 benefits by reason of a plan termi-  
19 nation or otherwise.

20 “(ii) SIGNIFICANT REDUCTION OF  
21 RATE OF ACCRUAL.—The plan shall pro-  
22 vide that if, during any of the first 5 plan  
23 years during which such an election is in  
24 effect, the plan adopts an amendment  
25 which results in a significant reduction in

1 the rate of future benefit accrual (within  
2 the meaning of section 4980F(e)), the ac-  
3 crued benefit of the participant shall be de-  
4 termined as if the participant had made  
5 the election which resulted in the greatest  
6 accrued benefit.

7 “(iii) BENEFITS MUST NOT BE CON-  
8 TINGENT ON ELECTION.—The plan shall  
9 not be treated as meeting the requirements  
10 of either such subparagraph if any other  
11 benefit is conditioned (directly or indi-  
12 rectly) on such election.

13 “(G) APPLICABLE PLAN AMENDMENT.—

14 For purposes of this paragraph—

15 “(i) IN GENERAL.—The term ‘applica-  
16 ble plan amendment’ means an amendment  
17 to a defined benefit plan which has the ef-  
18 fect of converting the plan to a cash bal-  
19 ance plan.

20 “(ii) SPECIAL RULE FOR COORDI-  
21 NATED BENEFITS.—If the benefits of 2 or  
22 more defined benefit plans established or  
23 maintained by an employer are coordinated  
24 in such a manner as to have the effect of  
25 the adoption of an amendment described in

1 clause (i), the sponsor of the defined ben-  
2 efit plan or plans providing for such co-  
3 ordination shall be treated as having  
4 adopted such a plan amendment as of the  
5 date such coordination begins.

6 “(iii) MULTIPLE AMENDMENTS.—The  
7 Secretary shall issue regulations to prevent  
8 the avoidance of the purposes of this para-  
9 graph through the use of 2 or more plan  
10 amendments rather than a single amend-  
11 ment.

12 “(iv) CASH BALANCE PLAN.—For pur-  
13 poses of this paragraph, the term ‘cash  
14 balance plan’ has the meaning given such  
15 term by subsection (b)(5)(C).

16 “(v) COORDINATION WITH ACCRUAL  
17 AND NONDISCRIMINATION RULES.—If a  
18 plan amendment is treated as meeting the  
19 requirements of this paragraph with re-  
20 spect to any participant because such par-  
21 ticipant is eligible to continue to accrue  
22 benefits in the same manner as under the  
23 terms of the plan in effect before the  
24 amendment, the Secretary shall prescribe  
25 regulations under which—

1           “(I) the plan shall not be treated  
2           as failing to meet the requirements of  
3           subparagraph (A), (B), or (C) of sec-  
4           tion 411(b)(1) if the requirements of  
5           this paragraph are met, and

6           “(II) the plan shall, subject to  
7           such terms and conditions as may be  
8           provided in such regulations, not be  
9           treated as failing to meet the require-  
10          ments of section 401(a)(4) merely be-  
11          cause the plan provides any accrual or  
12          benefit which is required to be pro-  
13          vided under subparagraph (B), (C), or  
14          (D) or because only participants as of  
15          the effective date of the amendment  
16          are so eligible, except that this sub-  
17          clause shall only apply if the plan met  
18          the requirements of section 401(a)(4)  
19          under the terms of the plan as in ef-  
20          fect before the amendment.

21                 “(H) APPLICATION OF CERTAIN RULES TO  
22                 EARLY-RETIREMENT BENEFITS.—Rules similar  
23                 to the rules of clauses (i), (ii), and (iii) of sub-  
24                 paragraph (B) and subparagraph (C) shall  
25                 apply in the case of any early retirement benefit

1 or retirement-type subsidy (within the meaning  
2 of paragraph (6)(B)(i)).”.

3 (2) AMENDMENT OF ERISA.—Section 204(g) of  
4 the Employee Retirement Income Security Act of  
5 1974 (29 U.S.C. 1054(g)) is amended by adding at  
6 the end the following new paragraph:

7 “(6) TREATMENT OF CONVERSIONS TO CASH  
8 BALANCE OR OTHER HYBRID PLANS.—

9 “(A) IN GENERAL.—For purposes of para-  
10 graph (1), an applicable plan amendment shall  
11 be treated as reducing the accrued benefit of a  
12 participant if, under the terms of the plan as in  
13 effect after the amendment, the accrued benefit  
14 of any participant who was a participant as of  
15 the effective date of the amendment may at any  
16 time be less than the accrued benefit deter-  
17 mined under the method under subparagraph  
18 (B), (C), or (D) which is specified in the plan  
19 and applies uniformly to all participants. An  
20 applicable plan amendment shall in no event be  
21 treated as meeting the requirements of any  
22 such subparagraph if the conversion described  
23 in subparagraph (G)(i) is into a cash balance  
24 plan other than a qualified cash balance plan  
25 (as defined in subsection (b)(5)(B)).

1 “(B) NO WEARAWAY.—

2 “(i) IN GENERAL.—The accrued ben-  
3 efit determined under this subparagraph is  
4 the sum of—

5 “(I) the participant’s accrued  
6 benefit for years of service before the  
7 effective date of the amendment, de-  
8 termined under the terms of the plan  
9 as in effect before the amendment,  
10 plus

11 “(II) except as provided in clause  
12 (ii), the participant’s accrued benefit  
13 for years of service after the effective  
14 date of the amendment, determined  
15 under the terms of the plan as in ef-  
16 fect after the amendment.

17 “(ii) REQUIRED AMOUNTS FOR CER-  
18 TAIN PERIODS.—Notwithstanding clause  
19 (i)(II), the plan shall provide that either—

20 “(I) the accrued benefit of all  
21 participants for each of the first 5  
22 plan years to which the amendment  
23 applies shall be equal to the greater of  
24 the accrued benefit determined under

1 the terms of the plan as in effect both  
2 before and after the amendment, or

3 “(II) the accrued benefit for peri-  
4 ods after the effective date of the  
5 amendment of all participants who, as  
6 of the effective date of the amend-  
7 ment, had attained the age of 40 and  
8 had a combined age and years of serv-  
9 ice under the plan of not less than 55  
10 shall be determined under either of  
11 the methods described in clause (iii)  
12 which is selected by the plan and  
13 which is specified in the amendment.

14 “(iii) APPLICABLE METHOD.—For  
15 purposes of clause (ii)(II), the plan shall  
16 select 1 of the following methods:

17 “(I) The accrued benefit shall be  
18 equal to the greater of the accrued  
19 benefit determined under the terms of  
20 the plan as in effect both before and  
21 after the amendment.

22 “(II) At the election of the par-  
23 ticipant, the accrued benefit shall be  
24 determined under the terms of the

1 plan as in effect either before or after  
2 the amendment.

3 “(C) GREATER OF OLD OR NEW OR ELEC-  
4 TION OF EITHER.—The accrued benefit deter-  
5 mined under this subparagraph is the accrued  
6 benefit determined under 1 of the following  
7 methods which is selected by the plan and  
8 which is specified in the amendment:

9 “(i) The accrued benefit shall be equal  
10 to the greater of the accrued benefit deter-  
11 mined under the terms of the plan as in ef-  
12 fect both before and after the amendment.

13 “(ii) At the election of the participant,  
14 the accrued benefit shall be determined  
15 under the terms of the plan as in effect ei-  
16 ther before or after the amendment.

17 “(D) METHOD PRESCRIBED BY SEC-  
18 RETARY.—The accrued benefit determined  
19 under this subparagraph shall be determined  
20 under regulations prescribed by the Secretary of  
21 the Treasury which require a plan to provide a  
22 credit of additional amounts or increases in ini-  
23 tial account balances in amounts substantially  
24 equivalent to the benefits that would be re-

1           required to be provided to meet the requirements  
2           of subparagraphs (B) or (C).

3           “(E) INCLUSION OF PRIOR ACCRUED BEN-  
4           EFIT INTO INITIAL ACCOUNT BALANCE.—

5           “(i) IN GENERAL.—If, for purposes of  
6           subparagraphs (B), (C), or (D), an appli-  
7           cable plan amendment provides that an  
8           amount will be initially credited to a par-  
9           ticipant’s accumulation account (or its  
10          equivalent) on the effective date of the  
11          amendment with respect to the partici-  
12          pant’s accrued benefit for periods before  
13          such date, the requirements of such sub-  
14          paragraph shall be treated as met with re-  
15          spect to such accrued benefit if the amount  
16          initially credited is not less than the  
17          present value of the participant’s accrued  
18          benefit determined by using the applicable  
19          mortality table and the lower of the appli-  
20          cable interest rate under section  
21          205(g)(3)(A), or the interest rate used to  
22          credit interest under the plan, as of such  
23          date.

24          “(ii) ADJUSTMENTS FOR CERTAIN  
25          SUBSIDIZED BENEFITS.—For purposes of

1           subparagraph (B), if any early retirement  
2           benefit or retirement-type subsidy (within  
3           the meaning of paragraph (2)(A)) is not  
4           included in the initial account balance  
5           under clause (i), the plan shall credit the  
6           accumulation account with the amount of  
7           such benefit or subsidy for the plan year in  
8           which the participant retires if, as of such  
9           time, the participant has met the age,  
10          years of service, and other requirements  
11          under the plan for entitlement to such ben-  
12          efit or subsidy.

13           “(F) REQUIREMENTS WHERE PARTICIPANT  
14          OFFERED CHOICE.—If a plan provides a partici-  
15          pant with an election described in subparagraph  
16          (B)(iii)(II) or (C)(ii), the following rules shall  
17          apply:

18           “(i) NOTICE.—The plan shall not be  
19          treated as meeting the requirements of ei-  
20          ther such subparagraph unless the plan  
21          provides the participant a notice of the  
22          right to make such election which includes  
23          information (meeting such requirements as  
24          may be prescribed by the Secretary of the  
25          Treasury)—

1           “(I) by which the participant  
2           may project benefits under the for-  
3           mulas from which the participant may  
4           choose and may model the impact of  
5           any such choice, and

6           “(II) with respect to cir-  
7           cumstances under which a participant  
8           may not receive the projected accrued  
9           benefits by reason of a plan termi-  
10          nation or otherwise.

11          “(ii) SIGNIFICANT REDUCTION OF  
12          RATE OF ACCRUAL.—The plan shall pro-  
13          vide that if, during any of the first 5 plan  
14          years during which such an election is in  
15          effect, the plan adopts an amendment  
16          which results in a significant reduction in  
17          the rate of future benefit accrual (within  
18          the meaning of subsection (h)), the ac-  
19          crued benefit of the participant shall be de-  
20          termined as if the participant had made  
21          the election which resulted in the greatest  
22          accrued benefit.

23          “(iii) BENEFITS MUST NOT BE CON-  
24          TINGENT ON ELECTION.—The plan shall  
25          not be treated as meeting the requirements

1 of either such subparagraph if any other  
2 benefit is conditioned (directly or indi-  
3 rectly) on such election.

4 “(G) APPLICABLE PLAN AMENDMENT.—

5 For purposes of this paragraph—

6 “(i) IN GENERAL.—The term ‘applica-  
7 ble plan amendment’ means an amendment  
8 to a defined benefit plan which has the ef-  
9 fect of converting the plan to a cash bal-  
10 ance plan.

11 “(ii) SPECIAL RULE FOR COORDI-  
12 NATED BENEFITS.—If the benefits of 2 or  
13 more defined benefit plans established or  
14 maintained by an employer are coordinated  
15 in such a manner as to have the effect of  
16 the adoption of an amendment described in  
17 clause (i), the sponsor of the defined ben-  
18 efit plan or plans providing for such co-  
19 ordination shall be treated as having  
20 adopted such a plan amendment as of the  
21 date such coordination begins.

22 “(iii) MULTIPLE AMENDMENTS.—The  
23 Secretary of the Treasury shall issue regu-  
24 lations to prevent the avoidance of the pur-  
25 poses of this paragraph through the use of

1                   2 or more plan amendments rather than a  
2                   single amendment.

3                   “(iv) CASH BALANCE PLAN.—For pur-  
4                   poses of this paragraph, the term ‘cash  
5                   balance plan’ has the meaning given such  
6                   term by subsection (b)(5)(C).

7                   “(v) COORDINATION WITH ACCRUAL  
8                   RULES.—If a plan amendment is treated  
9                   as meeting the requirements of this para-  
10                  graph with respect to any participant be-  
11                  cause such participant is eligible to con-  
12                  tinue to accrue benefits in the same man-  
13                  ner as under the terms of the plan in ef-  
14                  fect before the amendment, the Secretary  
15                  of the Treasury shall prescribe regulations  
16                  under which the plan shall not be treated  
17                  as failing to meet the requirements of sub-  
18                  paragraph (A), (B), or (C) of subsection  
19                  (b)(1) if the requirements of this para-  
20                  graph are met.

21                  “(H) APPLICATION OF CERTAIN RULES TO  
22                  EARLY-RETIREMENT BENEFITS.—Rules similar  
23                  to the rules of clauses (i), (ii), and (iii) of sub-  
24                  paragraph (B) and subparagraph (C) shall  
25                  apply in the case of any early retirement benefit

1 or retirement-type subsidy (within the meaning  
2 of paragraph (2)(A)).”.

3 (c) ASSUMPTIONS USED IN COMPUTING PRESENT  
4 VALUE OF ACCRUED BENEFIT.—

5 (1) AMENDMENT OF INTERNAL REVENUE  
6 CODE.—Section 417(e)(3) of such Code is amend-  
7 ed—

8 (A) by striking “or (B)” in subparagraph  
9 (A)(i) and inserting “, (B), or (C)”, and

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

12 “(C) PRESENT VALUE OF ACCRUED BEN-  
13 EFIT UNDER CASH BALANCE PLAN.—Except as  
14 provided in regulations prescribed by the Sec-  
15 retary, in the case of a qualified cash balance  
16 plan (as defined in section 411(b)(5)(B)), the  
17 present value of the accrued benefit of any par-  
18 ticipant shall, for purposes of paragraphs (1)  
19 and (2), be equal to the balance in the partici-  
20 pant’s accumulation account (or its equivalent)  
21 as of the time the present value determination  
22 is being made.”

23 (2) AMENDMENT OF ERISA.—Section 205(g)(3)  
24 of such Act (29 U.S.C. 1055(g)(3)), is amended—

1 (A) by striking “or (B)” in subparagraph  
2 (A)(i) and inserting “, (B), or (C)”, and

3 (B) by adding at the end the following new  
4 subparagraph:

5 “(C) PRESENT VALUE OF ACCRUED BEN-  
6 EFIT UNDER CASH BALANCE PLAN.—Except as  
7 provided in regulations prescribed by the Sec-  
8 retary of the Treasury, in the case of a quali-  
9 fied cash balance plan (as defined in section  
10 204(b)(5)(B)), the present value of the accrued  
11 benefit of any participant shall, for purposes of  
12 paragraphs (1) and (2), be equal to the balance  
13 in the participant’s accumulation account (or  
14 its equivalent) as of the time the present value  
15 determination is being made.”.

16 (d) NO INFERENCE.—Nothing in the amendments  
17 made by this section shall be construed to infer the proper  
18 treatment of cash balance plans or conversions to cash bal-  
19 ance plans under sections 411(b)(1)(H) and 417(e) of the  
20 Internal Revenue Code of 1986 and 204(b)(1)(H) and  
21 205(g)(3) of the Employee Retirement Income Security  
22 Act of 1974, as in effect before such amendments.

23 (e) EFFECTIVE DATES.—

24 (1) AGE DISCRIMINATION AND LUMP-SUM DIS-  
25 TRIBUTIONS.—

1           (A) IN GENERAL.—The amendments made  
2           by subsections (a) and (c) shall apply to periods  
3           after July 26, 2005.

4           (B) VESTING AND INTEREST CREDIT RE-  
5           QUIREMENTS.—In the case of a plan in exist-  
6           ence on July 26, 2005, the requirements of  
7           clauses (ii) and (iii) of section 411(b)(5)(B) of  
8           the Internal Revenue Code of 1986 and of  
9           clauses (ii) and (iii) of 204(b)(5)(B) of the Em-  
10          ployee Retirement Income Security Act of 1974  
11          shall, for purposes of applying the amendments  
12          made by subsections (a) and (c), apply to years  
13          beginning after December 31, 2006, unless the  
14          plan sponsor elects the application of such re-  
15          quirements for any period after July 26, 2005,  
16          and before the first year beginning after De-  
17          cember 31, 2006.

18          (C) SPECIAL RULE FOR COLLECTIVELY  
19          BARGAINED PLANS.—In the case of a plan  
20          maintained pursuant to 1 or more collective  
21          bargaining agreements between employee rep-  
22          resentatives and 1 or more employers ratified  
23          on or before the date of the enactment of this  
24          Act, the requirements described in subpara-  
25          graph (B) shall, for purposes of applying the

1 amendments made by subsections (a) and (c),  
2 not apply to plan years beginning before the  
3 earlier of—

4 (i) the later of—

5 (I) the date on which the last of  
6 such collective bargaining agreements  
7 terminates (determined without re-  
8 gard to any extension thereof on or  
9 after such date of enactment), or

10 (II) January 1, 2007, or

11 (ii) January 1, 2009.

12 (2) CONVERSIONS.—The amendments made by  
13 subsection (b) shall apply to plan amendments  
14 adopted after, and taking effect after, July 26,  
15 2005, except that the plan sponsor may elect to have  
16 such amendments apply to plan amendments adopt-  
17 ed before, and taking effect after, such date.

18 **SEC. 342. TREATMENT OF ELIGIBLE COMBINED DEFINED**  
19 **BENEFIT PLANS AND QUALIFIED CASH OR**  
20 **DEFERRED ARRANGEMENTS.**

21 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—  
22 Section 414 of the Internal Revenue Code of 1986, as  
23 amended by this Act, is amended by adding at the end  
24 the following new subsection:

1       “(x) SPECIAL RULES FOR ELIGIBLE COMBINED DE-  
2 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-  
3 FERRED ARRANGEMENTS.—

4           “(1) GENERAL RULE.—Except as provided in  
5 this subsection, the requirements of this title shall  
6 be applied to any defined benefit plan or applicable  
7 defined contribution plan which are part of an eligi-  
8 ble combined plan in the same manner as if each  
9 such plan were not a part of the eligible combined  
10 plan.

11           “(2) ELIGIBLE COMBINED PLAN.—For pur-  
12 poses of this subsection—

13           “(A) IN GENERAL.—The term ‘eligible  
14 combined plan’ means a plan—

15           “(i) which consists of a defined ben-  
16 efit plan and an applicable defined con-  
17 tribution plan,

18           “(ii) the assets of which are held in a  
19 single trust forming part of the plan and  
20 are clearly identified and allocated to the  
21 defined benefit plan and the applicable de-  
22 fined contribution plan to the extent nec-  
23 essary for the separate application of this  
24 title under paragraph (1), and

1           “(iii) with respect to which the ben-  
2           efit, contribution, vesting, and non-  
3           discrimination requirements of subpara-  
4           graphs (B), (C), (D), (E), and (F) are  
5           met.

6           “(B) BENEFIT REQUIREMENTS.—

7           “(i) IN GENERAL.—The benefit re-  
8           quirements of this subparagraph are met  
9           with respect to the defined benefit plan  
10          forming part of the eligible combined plan  
11          if the accrued benefit of each participant  
12          derived from employer contributions, when  
13          expressed as an annual retirement benefit,  
14          is not less than the applicable percentage  
15          of the participant’s final average pay. For  
16          purposes of this clause, final average pay  
17          shall be determined using the period of  
18          consecutive years (not exceeding 5) during  
19          which the participant had the greatest ag-  
20          gregate compensation from the employer.

21          “(ii) APPLICABLE PERCENTAGE.—For  
22          purposes of clause (i), the applicable per-  
23          centage is the lesser of—

1                   “(I) 1 percent multiplied by the  
 2                   number of years of service with the  
 3                   employer, or

4                   “(II) 20 percent.

5                   “(iii) SPECIAL RULE FOR CASH BAL-  
 6                   ANCE PLANS.—If the defined benefit plan  
 7                   under clause (i) is a qualified cash balance  
 8                   plan (within the meaning of section  
 9                   411(b)(5)), the plan shall be treated as  
 10                  meeting the requirements of clause (i) with  
 11                  respect to any plan year if each participant  
 12                  receives pay credit for the year which is  
 13                  not less than the percentage of compensa-  
 14                  tion determined in accordance with the fol-  
 15                  lowing table:

<b>“If the participant’s age as of the beginning of the year is—</b>	<b>The percentage is—</b>
30 or less .....	2
Over 30 but less than 40 .....	4
40 or over but less than 50 .....	6
50 or over .....	8.

16                  “(iv) YEARS OF SERVICE.—For pur-  
 17                  poses of this subparagraph, years of serv-  
 18                  ice shall be determined under the rules of  
 19                  paragraphs (4), (5), and (6) of section  
 20                  411(a), except that the plan may not dis-  
 21                  regard any year of service because of a  
 22                  participant making, or failing to make, any

1 elective deferral with respect to the quali-  
2 fied cash or deferred arrangement to which  
3 subparagraph (C) applies.

4 “(C) CONTRIBUTION REQUIREMENTS.—

5 “(i) IN GENERAL.—The contribution  
6 requirements of this subparagraph with re-  
7 spect to any applicable defined contribu-  
8 tion plan forming part of eligible combined  
9 plan are met if—

10 “(I) the qualified cash or de-  
11 ferred arrangement included in such  
12 plan constitutes an automatic con-  
13 tribution arrangement, and

14 “(II) the employer is required to  
15 make matching contributions on be-  
16 half of each employee eligible to par-  
17 ticipate in the arrangement in an  
18 amount equal to 50 percent of the  
19 elective contributions of the employee  
20 to the extent such elective contribu-  
21 tions do not exceed 4 percent of com-  
22 pensation.

23 Rules similar to the rules of clauses (ii)  
24 and (iii) of section 401(k)(12)(B) shall  
25 apply for purposes of this clause.

1                   “(ii)     NONELECTIVE     CONTRIBU-  
2                   TIONS.—An applicable defined contribution  
3                   plan shall not be treated as failing to meet  
4                   the requirements of clause (i) because the  
5                   employer makes nonelective contributions  
6                   under the plan but such contributions shall  
7                   not be taken into account in determining  
8                   whether the requirements of clause (i)(II)  
9                   are met.

10                  “(D) VESTING REQUIREMENTS.—The vest-  
11                  ing requirements of this subparagraph are met  
12                  if—

13                         “(i) in the case of a defined benefit  
14                         plan forming part of an eligible combined  
15                         plan an employee who has completed at  
16                         least 3 years of service has a nonforfeitable  
17                         right to 100 percent of the employee’s ac-  
18                         crued benefit under the plan derived from  
19                         employer contributions, and

20                         “(ii) in the case of an applicable de-  
21                         fined contribution plan forming part of eli-  
22                         gible combined plan—

23                                 “(I) an employee has a non-  
24                                 forfeitable right to any matching con-  
25                                 tribution made under the qualified

1 cash or deferred arrangement included  
2 in such plan by an employer with re-  
3 spect to any elective contribution, in-  
4 cluding matching contributions in ex-  
5 cess of the contributions required  
6 under subparagraph (C)(i)(II), and

7 “(II) an employee who has com-  
8 pleted at least 3 years of service has  
9 a nonforfeitable right to 100 percent  
10 of the employee’s accrued benefit de-  
11 rived under the arrangement from  
12 nonelective contributions of the em-  
13 ployer.

14 For purposes of this subparagraph, the  
15 rules of section 411 shall apply to the ex-  
16 tent not inconsistent with this subpara-  
17 graph.

18 “(E) UNIFORM PROVISION OF BENE-  
19 FITS.—In the case of a defined benefit plan or  
20 applicable defined contribution plan forming  
21 part of an eligible combined plan, the require-  
22 ments of this subparagraph are met if all bene-  
23 fits under each such plan, and all rights and  
24 features under each such plan, must be pro-  
25 vided uniformly to all participants.

1           “(F) REQUIREMENTS MUST BE MET WITH-  
2           OUT TAKING INTO ACCOUNT SOCIAL SECURITY  
3           AND SIMILAR CONTRIBUTIONS AND BENEFITS  
4           OR OTHER PLANS.—

5           “(i) IN GENERAL.—The requirements  
6           of this subparagraph are met if the re-  
7           quirements of clauses (ii) and (iii) are met.

8           “(ii) SOCIAL SECURITY AND SIMILAR  
9           CONTRIBUTIONS.—The requirements of  
10          this clause are met if—

11           “(I) the requirements of subpara-  
12          graphs (B) and (C) are met without  
13          regard to section 401(l), and

14           “(II) the requirements of sections  
15          401(a)(4) and 410(b) are met with re-  
16          spect to both the applicable defined  
17          contribution plan and defined benefit  
18          plan forming part of an eligible com-  
19          bined plan without regard to section  
20          401(l).

21           “(iii) OTHER PLANS AND ARRANGE-  
22          MENTS.—The requirements of this clause  
23          are met if the applicable defined contribu-  
24          tion plan and defined benefit plan forming  
25          part of an eligible combined plan meet the

1 requirements of sections 401(a)(4) and  
2 410(b) without being combined with any  
3 other plan.

4 “(3) NONDISCRIMINATION REQUIREMENTS FOR  
5 QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

6 “(A) IN GENERAL.—A qualified cash or  
7 deferred arrangement which is included in an  
8 applicable defined contribution plan forming  
9 part of an eligible combined plan shall be treat-  
10 ed as meeting the requirements of section  
11 401(k)(3)(A)(ii) if the requirements of para-  
12 graph (2)(C) are met with respect to such ar-  
13 rangement.

14 “(B) MATCHING CONTRIBUTIONS.—In ap-  
15 plying section 401(m)(11) to any matching con-  
16 tribution with respect to a contribution to which  
17 paragraph (2)(C) applies, the contribution re-  
18 quirement of paragraph (2)(C) and the notice  
19 requirements of paragraph (5)(B) shall be sub-  
20 stituted for the requirements otherwise applica-  
21 ble under clauses (i) and (ii) of section  
22 401(m)(11)(A).

23 “(4) SATISFACTION OF TOP-HEAVY RULES.—A  
24 defined benefit plan and applicable defined contribu-  
25 tion plan forming part of an eligible combined plan

1 for any plan year shall be treated as meeting the re-  
2 quirements of section 416 for the plan year.

3 “(5) AUTOMATIC CONTRIBUTION ARRANGE-  
4 MENT.—For purposes of this subsection—

5 “(A) IN GENERAL.—A qualified cash or  
6 deferred arrangement shall be treated as an  
7 automatic contribution arrangement if the ar-  
8 rangement—

9 “(i) provides that each employee eligi-  
10 ble to participate in the arrangement is  
11 treated as having elected to have the em-  
12 ployer make elective contributions in an  
13 amount equal to 4 percent of the employ-  
14 ee’s compensation unless the employee spe-  
15 cifically elects not to have such contribu-  
16 tions made or to have such contributions  
17 made at a different rate, and

18 “(ii) meets the notice requirements  
19 under subparagraph (B).

20 “(B) NOTICE REQUIREMENTS.—

21 “(i) IN GENERAL.—The requirements  
22 of this subparagraph are met if the re-  
23 quirements of clauses (ii) and (iii) are met.

24 “(ii) REASONABLE PERIOD TO MAKE  
25 ELECTION.—The requirements of this

1 clause are met if each employee to whom  
2 subparagraph (A)(i) applies—

3 “(I) receives a notice explaining  
4 the employee’s right under the ar-  
5 rangement to elect not to have elective  
6 contributions made on the employee’s  
7 behalf or to have the contributions  
8 made at a different rate, and

9 “(II) has a reasonable period of  
10 time after receipt of such notice and  
11 before the first elective contribution is  
12 made to make such election.

13 “(iii) ANNUAL NOTICE OF RIGHTS  
14 AND OBLIGATIONS.—The requirements of  
15 this clause are met if each employee eligi-  
16 ble to participate in the arrangement is,  
17 within a reasonable period before any year,  
18 given notice of the employee’s rights and  
19 obligations under the arrangement.

20 The requirements of clauses (i) and (ii) of sec-  
21 tion 401(k)(12)(D) shall be met with respect to  
22 the notices described in clauses (ii) and (iii) of  
23 this subparagraph.

24 “(6) COORDINATION WITH OTHER REQUIRE-  
25 MENTS.—

1           “(A) TREATMENT OF SEPARATE PLANS.—  
2           Section 414(k) shall not apply to an eligible  
3           combined plan.

4           “(B) REPORTING.—An eligible combined  
5           plan shall be treated as a single plan for pur-  
6           poses of sections 6058 and 6059.

7           “(7) APPLICABLE DEFINED CONTRIBUTION  
8           PLAN.—For purposes of this subsection—

9           “(A) IN GENERAL.—The term ‘applicable  
10           defined contribution plan’ means a defined con-  
11           tribution plan which includes a qualified cash or  
12           deferred arrangement.

13           “(B) QUALIFIED CASH OR DEFERRED AR-  
14           RANGEMENT.—The term ‘qualified cash or de-  
15           ferred arrangement’ has the meaning given  
16           such term by section 401(k)(2).”.

17           (b) AMENDMENTS OF ERISA.—

18           (1) IN GENERAL.—Section 210 of the Employee  
19           Retirement Income Security Act of 1974 is amended  
20           by adding at the end the following new subsection:

21           “(e) SPECIAL RULES FOR ELIGIBLE COMBINED DE-  
22           FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-  
23           FERRED ARRANGEMENTS.—

24           “(1) GENERAL RULE.—Except as provided in  
25           this subsection, this Act shall be applied to any de-

1       defined benefit plan or applicable individual account  
2       plan which are part of an eligible combined plan in  
3       the same manner as if each such plan were not a  
4       part of the eligible combined plan.

5               “(2) ELIGIBLE COMBINED PLAN.—For pur-  
6       poses of this subsection—

7                       “(A) IN GENERAL.—The term ‘eligible  
8       combined plan’ means a plan—

9                               “(i) which consists of a defined ben-  
10                              efit plan and an applicable individual ac-  
11                              count plan each of which qualifies under  
12                              section 401(a) of the Internal Revenue  
13                              Code of 1986,

14                             “(ii) the assets of which are held in a  
15                             single trust forming part of the plan and  
16                             are clearly identified and allocated to the  
17                             defined benefit plan and the applicable in-  
18                             dividual account plan to the extent nec-  
19                             essary for the separate application of this  
20                             Act under paragraph (1), and

21                             “(iii) with respect to which the ben-  
22                             efit, contribution, vesting, and non-  
23                             discrimination requirements of subpara-  
24                             graphs (B), (C), (D), (E), and (F) are  
25                             met.

1 “(B) BENEFIT REQUIREMENTS.—

2 “(i) IN GENERAL.—The benefit re-  
3 quirements of this subparagraph are met  
4 with respect to the defined benefit plan  
5 forming part of the eligible combined plan  
6 if the accrued benefit of each participant  
7 derived from employer contributions, when  
8 expressed as an annual retirement benefit,  
9 is not less than the applicable percentage  
10 of the participant’s final average pay. For  
11 purposes of this clause, final average pay  
12 shall be determined using the period of  
13 consecutive years (not exceeding 5) during  
14 which the participant had the greatest ag-  
15 gregate compensation from the employer.

16 “(ii) APPLICABLE PERCENTAGE.—For  
17 purposes of clause (i), the applicable per-  
18 centage is the lesser of—

19 “(I) 1 percent multiplied by the  
20 number of years of service with the  
21 employer, or

22 “(II) 20 percent.

23 “(iii) SPECIAL RULE FOR CASH BAL-  
24 ANCE PLANS.—If the defined benefit plan  
25 under clause (i) is a qualified cash balance

1 plan (within the meaning of section  
 2 204(b)(5)), the plan shall be treated as  
 3 meeting the requirements of clause (i) with  
 4 respect to any plan year if each participant  
 5 receives pay credit for the year which is  
 6 not less than the percentage of compensa-  
 7 tion determined in accordance with the fol-  
 8 lowing table:

<b>“If the participant’s age as of the beginning of the year is—</b>	<b>The percentage is—</b>
30 or less .....	2
Over 30 but less than 40 .....	4
40 or over but less than 50 .....	6
50 or over .....	8.

9 “(iv) YEARS OF SERVICE.—For pur-  
 10 poses of this subparagraph, years of serv-  
 11 ice shall be determined under the rules of  
 12 paragraphs (1), (2), and (3) of section  
 13 203(b), except that the plan may not dis-  
 14 regard any year of service because of a  
 15 participant making, or failing to make, any  
 16 elective deferral with respect to the quali-  
 17 fied cash or deferred arrangement to which  
 18 subparagraph (C) applies.

19 “(C) CONTRIBUTION REQUIREMENTS.—

20 “(i) IN GENERAL.—The contribution  
 21 requirements of this subparagraph with re-  
 22 spect to any applicable individual account

1 plan forming part of eligible combined plan  
2 are met if—

3 “(I) the qualified cash or de-  
4 ferred arrangement included in such  
5 plan constitutes an automatic con-  
6 tribution arrangement, and

7 “(II) the employer is required to  
8 make matching contributions on be-  
9 half of each employee eligible to par-  
10 ticipate in the arrangement in an  
11 amount equal to 50 percent of the  
12 elective contributions of the employee  
13 to the extent such elective contribu-  
14 tions do not exceed 4 percent of com-  
15 pensation.

16 Rules similar to the rules of clauses (ii)  
17 and (iii) of section 401(k)(12)(B) of the  
18 Internal Revenue Code of 1986 shall apply  
19 for purposes of this clause.

20 “(ii) NONELECTIVE CONTRIBU-  
21 TIONS.—An applicable individual account  
22 plan shall not be treated as failing to meet  
23 the requirements of clause (i) because the  
24 employer makes nonelective contributions  
25 under the plan but such contributions shall

1 not be taken into account in determining  
2 whether the requirements of clause (i)(II)  
3 are met.

4 “(D) VESTING REQUIREMENTS.—The vest-  
5 ing requirements of this subparagraph are met  
6 if—

7 “(i) in the case of a defined benefit  
8 plan forming part of an eligible combined  
9 plan an employee who has completed at  
10 least 3 years of service has a nonforfeitable  
11 right to 100 percent of the employee’s ac-  
12 crued benefit under the plan derived from  
13 employer contributions, and

14 “(ii) in the case of an applicable indi-  
15 vidual account plan forming part of eligible  
16 combined plan—

17 “(I) an employee has a non-  
18 forfeitable right to any matching con-  
19 tribution made under the qualified  
20 cash or deferred arrangement included  
21 in such plan by an employer with re-  
22 spect to any elective contribution, in-  
23 cluding matching contributions in ex-  
24 cess of the contributions required  
25 under subparagraph (C)(i)(II), and

1                   “(II) an employee who has com-  
2                   pleted at least 3 years of service has  
3                   a nonforfeitable right to 100 percent  
4                   of the employee’s accrued benefit de-  
5                   rived under the arrangement from  
6                   nonelective contributions of the em-  
7                   ployer.

8                   For purposes of this subparagraph, the  
9                   rules of section 203 shall apply to the ex-  
10                  tent not inconsistent with this subpara-  
11                  graph.

12                  “(E) UNIFORM PROVISION OF BENE-  
13                  FITS.—In the case of a defined benefit plan or  
14                  applicable individual account plan forming part  
15                  of an eligible combined plan, the requirements  
16                  of this subparagraph are met if all benefits  
17                  under each such plan, and all rights and fea-  
18                  tures under each such plan, must be provided  
19                  uniformly to all participants.

20                  “(F) REQUIREMENTS MUST BE MET WITH-  
21                  OUT TAKING INTO ACCOUNT SOCIAL SECURITY  
22                  AND SIMILAR CONTRIBUTIONS AND BENEFITS  
23                  OR OTHER PLANS.—

1           “(i) IN GENERAL.—The requirements  
2 of this subparagraph are met if the re-  
3 quirements of clauses (ii) and (iii) are met.

4           “(ii) SOCIAL SECURITY AND SIMILAR  
5 CONTRIBUTIONS.—The requirements of  
6 this clause are met if—

7                   “(I) the requirements of subpara-  
8 graphs (B) and (C) are met without  
9 regard to section 401(l) of the Inter-  
10 nal Revenue Code of 1986, and

11                   “(II) the requirements of sections  
12 401(a)(4) and 410(b) of the Internal  
13 Revenue Code of 1986 are met with  
14 respect to both the applicable defined  
15 contribution plan and defined benefit  
16 plan forming part of an eligible com-  
17 bined plan without regard to section  
18 401(l) of the Internal Revenue Code  
19 of 1986.

20           “(iii) OTHER PLANS AND ARRANGE-  
21 MENTS.—The requirements of this clause  
22 are met if the applicable defined contribu-  
23 tion plan and defined benefit plan forming  
24 part of an eligible combined plan meet the  
25 requirements of sections 401(a)(4) and

1           410(b) of the Internal Revenue Code of  
2           1986 without being combined with any  
3           other plan.

4           “(3) NONDISCRIMINATION REQUIREMENTS FOR  
5           QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

6           “(A) IN GENERAL.—A qualified cash or  
7           deferred arrangement which is included in an  
8           applicable individual account plan forming part  
9           of an eligible combined plan shall be treated as  
10          meeting the requirements of section  
11          401(k)(3)(A)(ii) of the Internal Revenue Code  
12          of 1986 if the requirements of subparagraph  
13          (C) are met with respect to such arrangement.

14          “(B) MATCHING CONTRIBUTIONS.—In ap-  
15          plying section 401(m)(11) of such Code to any  
16          matching contribution with respect to a con-  
17          tribution to which paragraph (2)(C) applies, the  
18          contribution requirement of paragraph (2)(C)  
19          and the notice requirements of paragraph  
20          (5)(B) shall be substituted for the requirements  
21          otherwise applicable under clauses (i) and (ii) of  
22          section 401(m)(11)(A) of such Code.

23          “(4) AUTOMATIC CONTRIBUTION ARRANGE-  
24          MENT.—For purposes of this subsection—

1           “(A) IN GENERAL.—A qualified cash or  
2 deferred arrangement shall be treated as an  
3 automatic contribution arrangement if the ar-  
4 rangement—

5           “(i) provides that each employee eligi-  
6 ble to participate in the arrangement is  
7 treated as having elected to have the em-  
8 ployer make elective contributions in an  
9 amount equal to 4 percent of the employ-  
10 ee’s compensation unless the employee spe-  
11 cifically elects not to have such contribu-  
12 tions made or to have such contributions  
13 made at a different rate, and

14           “(ii) meets the notice requirements  
15 under subparagraph (B).

16           “(B) NOTICE REQUIREMENTS.—

17           “(i) IN GENERAL.—The requirements  
18 of this subparagraph are met if the re-  
19 quirements of clauses (ii) and (iii) are met.

20           “(ii) REASONABLE PERIOD TO MAKE  
21 ELECTION.—The requirements of this  
22 clause are met if each employee to whom  
23 subparagraph (A)(i) applies—

24           “(I) receives a notice explaining  
25 the employee’s right under the ar-

1                   rangement to elect not to have elective  
2                   contributions made on the employee’s  
3                   behalf or to have the contributions  
4                   made at a different rate, and

5                   “(II) has a reasonable period of  
6                   time after receipt of such notice and  
7                   before the first elective contribution is  
8                   made to make such election.

9                   “(iii) ANNUAL NOTICE OF RIGHTS  
10                  AND OBLIGATIONS.—The requirements of  
11                  this clause are met if each employee eligi-  
12                  ble to participate in the arrangement is,  
13                  within a reasonable period before any year,  
14                  given notice of the employee’s rights and  
15                  obligations under the arrangement.

16                  The requirements of clauses (i) and (ii) of sec-  
17                  tion 401(k)(12)(D) of the Internal Revenue  
18                  Code of 1986 shall be met with respect to the  
19                  notices described in clauses (ii) and (iii) of this  
20                  subparagraph.

21                  “(5) COORDINATION WITH OTHER REQUIRE-  
22                  MENTS.—

23                  “(A) TREATMENT OF SEPARATE PLANS.—  
24                  Section 414(k) of the Internal Revenue Code of

1           1986 shall not apply to an eligible combined  
2           plan.

3           “(B) REPORTING.—An eligible combined  
4           plan shall be treated as a single plan for pur-  
5           poses of section 103.

6           “(6) APPLICABLE INDIVIDUAL ACCOUNT  
7           PLAN.—For purposes of this subsection—

8           “(A) IN GENERAL.—The term ‘applicable  
9           individual account plan’ means an individual ac-  
10          count plan which includes a qualified cash or  
11          deferred arrangement.

12          “(B) QUALIFIED CASH OR DEFERRED AR-  
13          RANGEMENT.—The term ‘qualified cash or de-  
14          ferred arrangement’ has the meaning given  
15          such term by section 401(k)(2) of the Internal  
16          Revenue Code of 1986.”.

17          (2) CONFORMING CHANGES.—

18                 (A) The heading for section 210 of such  
19                 Act is amended to read as follows:

20                 “MULTIPLE EMPLOYER PLANS AND OTHER SPECIAL  
21                                 RULES”.

22                 (B) The table of contents in section 1 of  
23                 such Act is amended by striking the item relat-  
24                 ing to section 210 and inserting the following  
25                 new item:

“Sec. 210. Multiple employer plans and other special rules.”.

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

## 4 **Subtitle D—Studies**

### 5 **SEC. 351. JOINT STUDY ON REVITALIZING DEFINED BEN-** 6 **EFIT PLANS.**

7 (a) STUDY.—As soon as practicable after the date of  
8 the enactment of this Act, the Secretary of the Treasury,  
9 the Secretary of Labor, and the Executive Director of the  
10 Pension Benefit Guaranty Corporation shall jointly under-  
11 take a study on ways to revitalize interest in defined ben-  
12 efit plans among employers. In conducting such study, the  
13 Secretaries and the Executive Director shall consider—

14 (1) ways to encourage the establishment of de-  
15 fined benefit plans by small- and mid-sized employ-  
16 ers,

17 (2) ways to encourage the continued mainte-  
18 nance of defined benefit plans by larger employers,  
19 and

20 (3) legislative proposals to accomplish the objec-  
21 tives described in paragraphs (1) and (2).

22 (b) REPORT.—Not later than 2 years after the date  
23 of the enactment of this Act, the Secretaries and the Exec-  
24 utive Director shall report the results of the study, to-  
25 gether with any recommendations for legislative changes,

1 to the Committees on Ways and Means and Education and  
2 the Workforce of the House of Representatives and the  
3 Committees on Finance and Health, Education, Labor,  
4 and Pensions of the Senate.

5 **SEC. 352. STUDY ON FLOOR-OFFSET ESOPS.**

6 (a) STUDY.—As soon as practicable after the date of  
7 the enactment of this Act, the Secretary of the Treasury  
8 and the Pension Benefit Guaranty Corporation shall un-  
9 dertake a study to determine the number of floor-offset  
10 employee stock ownership plans still in existence and the  
11 extent to which such plans pose a risk to plan participants  
12 or beneficiaries and to the Corporation. Such study shall  
13 consider legislative proposals to address such risks.

14 (b) REPORT.—Not later than 1 year after the date  
15 of the enactment of this Act, the Secretary and the Cor-  
16 poration shall report the results of the study, together  
17 with any recommendations for legislative changes, to the  
18 Committees on Ways and Means and Education and the  
19 Workforce of the House of Representatives and the Com-  
20 mittees on Finance and Health, Education, Labor, and  
21 Pensions of the Senate.

1 **TITLE IV—DISCLOSURE AND**  
2 **BENEFIT STATEMENT RE-**  
3 **QUIREMENTS FOR SINGLE-**  
4 **EMPLOYER DEFINED BEN-**  
5 **EFIT PLANS**

6 **SEC. 401. ACTUARIAL REPORTS AND SUMMARY ANNUAL RE-**  
7 **PORTS.**

8 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

9 (1) ACTUARIAL REPORT.—Section 6059(b) of  
10 the Internal Revenue Code of 1986 (relating to actu-  
11 arial reports), as amended by this Act, is amended  
12 by—

13 (A) redesignating paragraphs (4) and (5)  
14 as paragraphs (5) and (6), respectively; and

15 (B) inserting after paragraph (3) the fol-  
16 lowing:

17 “(4) in the case of a single-employer plan, as of  
18 the valuation date to which the report relates—

19 “(A) the fair market value of the plan as-  
20 sets;

21 “(B) the target liability and the target  
22 normal cost, as determined under section 430;  
23 and

24 “(C) the at risk-liability amount and the  
25 at-risk normal cost (determined as if section

1           430(f) applied to the plan and the plan sponsor  
2           were a financially-weak employer for the plan  
3           year and the 4 immediately preceding plan  
4           years);”.

5           (2) EXCISE TAX.—Chapter 43 of the Internal  
6           Revenue Code of 1986 (relating to qualified pension,  
7           etc., plans), as amended by this Act, is amended by  
8           adding at the end the following new section:

9   **“SEC. 4980K. FAILURE OF CERTAIN PENSION PLANS TO**  
10                           **PROVIDE REQUIRED NOTICES.**

11           “(a) IMPOSITION OF TAX.—There is hereby imposed  
12           a tax on the failure of a defined benefit plan which is a  
13           single-employer plan to meet the requirements of sub-  
14           section (e).

15           “(b) AMOUNT OF TAX.—

16                   “(1) IN GENERAL.—The amount of the tax im-  
17                   posed by subsection (a) on any failure with respect  
18                   to any person required to receive a notice shall be  
19                   \$100 for each day in the noncompliance period with  
20                   respect to the failure.

21                   “(2) NONCOMPLIANCE PERIOD.—For purposes  
22                   of this section, the term ‘noncompliance period’  
23                   means, with respect to any failure, the period begin-  
24                   ning on the date the failure first occurs and ending

1 on the date the statement to which the failure re-  
2 lates is provided or the failure is otherwise corrected.

3 “(c) LIMITATIONS ON AMOUNT OF TAX.—

4 “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
5 DISCOVERED AND REASONABLE DILIGENCE EXER-  
6 CISED.—No tax shall be imposed by subsection (a)  
7 on any failure during any period for which it is es-  
8 tablished to the satisfaction of the Secretary that  
9 any person subject to liability for tax under sub-  
10 section (d) did not know that the failure existed and  
11 exercised reasonable diligence to meet the require-  
12 ments of subsection (e).

13 “(2) TAX NOT TO APPLY TO FAILURES COR-  
14 RECTED WITHIN 30 DAYS.—No tax shall be imposed  
15 by subsection (a) on any failure if—

16 “(A) any person subject to liability for the  
17 tax under subsection (d) exercised reasonable  
18 diligence to meet the requirements of subsection  
19 (e), and

20 “(B) such person provides the statement  
21 described in subsection (e) during the 30-day  
22 period beginning on the first date such person  
23 knew, or exercising reasonable diligence should  
24 have known, that such failure existed.

1           “(3) OVERALL LIMITATION FOR UNINTEN-  
2 TIONAL FAILURES.—

3           “(A) IN GENERAL.—If the person subject  
4 to liability for tax under subsection (d) exer-  
5 cised reasonable diligence to meet the require-  
6 ments of subsection (e), the tax imposed by  
7 subsection (a) for failures during the taxable  
8 year of the employer shall not exceed \$500,000.

9           “(B) TAXABLE YEARS IN THE CASE OF  
10 CERTAIN CONTROLLED GROUPS.—For purposes  
11 of this paragraph, if all persons who are treated  
12 as a single employer for purposes of this section  
13 do not have the same taxable year, the taxable  
14 years taken into account shall be determined  
15 under principles similar to the principles of sec-  
16 tion 1561.

17           “(4) WAIVER BY SECRETARY.—In the case of a  
18 failure which is due to reasonable cause and not to  
19 willful neglect, the Secretary may waive part or all  
20 of the tax imposed by subsection (a) to the extent  
21 that the payment of such tax would be excessive or  
22 otherwise inequitable relative to the failure involved.

23           “(d) LIABILITY FOR TAX.—The employer shall be lia-  
24 ble for the tax imposed by subsection (a).

1       “(e) REQUIREMENT TO PROVIDE SUMMARY ANNUAL  
2 REPORT.—

3           “(1) IN GENERAL.—Not later than the date  
4 prescribed by the Secretary, the administrator of a  
5 defined benefit plan which is a single-employer plan  
6 shall furnish a summary annual report described in  
7 paragraph (2).

8           “(2) CONTENT OF STATEMENT.—A summary  
9 annual report furnished under paragraph (1) shall  
10 include the following information:

11           “(A) A statement of the assets and liabil-  
12 ities of the plan aggregated by categories and  
13 valued at their current value, and the same  
14 data displayed in comparative form for the end  
15 the previous fiscal year of the plan.

16           “(B) A statement of the receipts and dis-  
17 bursements during the preceding 12-month pe-  
18 riod aggregated by general sources and applica-  
19 tions.

20           “(C) A statement of the funded target li-  
21 ability percentage, as defined in section 436(e),  
22 of the plan for such fiscal year and for the 2  
23 preceding fiscal years.

24           “(D) A statement of whether or not the  
25 plan sponsor was a financially-weak employer

1 (as determined under section 430(f)) during  
2 each of the fiscal years described in subpara-  
3 graph (C).

4 “(E) The limits on the guarantee of the  
5 Pension Benefit Guaranty Corporation under  
6 title IV of the Employee Retirement Income Se-  
7 curity Act of 1974 if the plan is terminated  
8 while underfunded.

9 “(F) Such other material (including the  
10 percentage determined under section  
11 103(d)(11) of the Employee Retirement Income  
12 Security Act of 1974) as is necessary to fairly  
13 summarize the latest return under section  
14 6058.

15 “(3) FORM AND MANNER.—The Secretary of  
16 Labor may prescribe the form and manner of the  
17 summary annual report under this subsection and  
18 any additional information required to be included in  
19 such report. Such notice shall be written in a man-  
20 ner calculated to be understood by the average plan  
21 participant and may be delivered in written, elec-  
22 tronic, or other appropriate form to the extent that  
23 such form is reasonably accessible to the recipient.”.

24 (3) AGGREGATION.—Section 414(t) of such  
25 Code, as amended by this Act, is amended by strik-

1       ing “4980I, or 4980J” and inserting “4980I,  
2       4980J, or 4980K”.

3               (4) CLERICAL AMENDMENT.—The table of sec-  
4       tions for chapter 43 of such Code, as amended by  
5       this Act, is amended by adding at the end the fol-  
6       lowing new item:

“Sec. 4980K. Failure of certain pension plans to provide required no-  
      tices.”.

7       (b) AMENDMENTS OF ERISA.—

8               (1) ACTUARIAL STATEMENT.—

9                       (A) ADDITIONAL INFORMATION RE-  
10       QUIRED.—Section 103(d)(3) of the Employee  
11       Retirement Income Security Act of 1974 (29  
12       U.S.C. 1023(d)(3)) is amended to read as fol-  
13       lows:

14               “(3) The following information applicable to the  
15       plan year in which the report is filed:

16                       “(A) An identification of benefits not in-  
17       cluded in the calculation; a statement of the  
18       other facts and actuarial assumptions and  
19       methods used to determine costs, and a jus-  
20       tification for any change in actuarial assump-  
21       tions or cost methods; and the minimum con-  
22       tribution required under section 302.

1           “(B) In the case of a multiemployer plan,  
2           the normal costs and the accrued liabilities of  
3           the plan.

4           “(C) In the case of a single-employer plan,  
5           the following information as of the valuation  
6           date for the plan year to which the report re-  
7           lates:

8           “(i) The fair market value of the plan as-  
9           sets.

10           “(ii) The target liability and the target  
11           normal cost, as determined under section 303.

12           “(iii) The at risk-liability and the at-risk  
13           normal cost (determined as if section 303(f) ap-  
14           plied to the plan and the plan sponsor were a  
15           financially-weak employer for the plan year and  
16           the 4 immediately preceding plan years).

17           “(iv) Any other information as prescribed  
18           by the Secretary.”.

19           (B) TIME FOR FILING ACTUARIAL STATE-  
20           MENT.—Section 103 of such Act (29 U.S.C.  
21           1023) is amended by adding at the end the fol-  
22           lowing:

23           “(f) SUBMISSION DATE OF ACTUARIAL STATE-  
24           MENT.—In the case of a plan that is subject to section  
25           303(j), the actuarial statement described under subsection

1 (d) shall be submitted to the Secretary not later than the  
2 date that is the fifteenth day of the second month fol-  
3 lowing the close of the applicable plan year. If a contribu-  
4 tion is made to such a plan after the submission of such  
5 actuarial statement but before the submission of the an-  
6 nual report under section 104(a), the plan shall submit  
7 an amended actuarial statement with such annual re-  
8 port.”.

9 (2) SUMMARY ANNUAL REPORT TO PLAN PAR-  
10 TICIPANTS.—

11 (A) IN GENERAL.—Section 104(b)(3) of  
12 the Employee Retirement Income Security Act  
13 of 1974 (29 U.S.C. 1024(b)(3)) is amended to  
14 read as follows:

15 “(3) SUMMARY ANNUAL REPORT.—Within 15 days  
16 after the due date under subsection (a)(1) for the filing  
17 of the annual report for the fiscal year of the plan, the  
18 plan administrator shall furnish to each participant, and  
19 to each beneficiary receiving benefits under the plan, a  
20 copy of the following information:

21 “(A) GENERAL INFORMATION.—The statements  
22 and schedules, for such fiscal year, described in sub-  
23 paragraphs (A) and (B) of section 103(b)(3) and  
24 such other material (including the percentage deter-

1 mined under section 103(d)(11)) as is necessary to  
2 fairly summarize the latest annual report.

3 “(B) ADDITIONAL INFORMATION FOR SINGLE-  
4 EMPLOYER PLANS.—In the case of a defined benefit  
5 plan that is a single-employer plan—

6 “(i) a statement of the funded target liabil-  
7 ity percentage, as defined in section 305(e), of  
8 the plan for such fiscal year and for the 2 pre-  
9 ceeding fiscal years;

10 “(ii) a statement of whether or not the  
11 plan sponsor was a financially-weak employer  
12 (as determined under section 303(f)) during  
13 each of the fiscal years described in clause (i);

14 “(iii) the limits on the guarantee of the  
15 Pension Benefit Guaranty Corporation under  
16 title IV if the plan is terminated while under-  
17 funded.

18 “(C) FORM AND MANNER OF REPORT.—The  
19 Secretary may prescribe the form and manner of the  
20 summary annual report under this subsection and  
21 any additional information required to be included in  
22 such report. Such notice shall be written in a man-  
23 ner calculated to be understood by the average plan  
24 participant and may be delivered in written, elec-

1       tronic, or other appropriate form to the extent that  
2       such form is reasonably accessible to the recipient.”.

3               (B) PENALTY.—Section 502(c)(7) of the  
4       Employee Retirement Income Security Act of  
5       1974 (29 U.S.C. 1132(c)(7)), as amended by  
6       this Act, is amended by striking “or section  
7       104(d)” and inserting “or subsection (b)(3) or  
8       (d) of section 104”.

9       (c) REPEAL OF PROVISIONS.—

10           (1) FREEDOM OF INFORMATION ACT EXEMP-  
11       TION.—Subsection (c) of section 4010 of the Em-  
12       ployee Retirement Income Security Act (29 U.S.C.  
13       1310(e)) is repealed.

14           (2) NOTICE TO PARTICIPANTS.—Section 4011  
15       of the Employee Retirement Income Security Act of  
16       1974 (29 U.S.C. 1311) is repealed.

17           (3) CONFORMING AMENDMENT.—The table of  
18       sections for title IV of the Employee Retirement In-  
19       come Security Act of 1974 is amended by striking  
20       the item relating to section 4011.

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

1 **SEC. 402. NOTICE OF FUNDING BENEFIT LIMITATIONS AND**  
2 **RESTRICTIONS ON BENEFIT INCREASES.**

3 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

4 (1) EXCISE TAX.—Section 4980K of the Inter-  
5 nal Revenue Code, as added by section 401, is  
6 amended—

7 (A) in subsection (a), by striking “sub-  
8 section (e)” and inserting “subsection (e) or  
9 (f)”;

10 (B) in subsection (c)—

11 (i) by striking “subsection (e)” each  
12 place it appears and inserting “subsection  
13 (e) or (f)”;

14 (ii) in paragraph (3), by adding at the  
15 end the following:

16 “(C) SEPARATE APPLICATION.—This para-  
17 graph shall be applied separately for failures to  
18 meet the requirements of subsections (e) and  
19 (f).”;

20 (C) by adding at the end the following:

21 “(f) REQUIREMENT TO PROVIDE NOTICE ON BEN-  
22 EFIT LIMITATIONS.—

23 “(1) IN GENERAL.—The plan administrator of  
24 a pension plan that becomes subject to any benefit  
25 limitation or restriction under section 436 shall pro-  
26 vide—

1           “(A) a written notice to plan participants  
2           and beneficiaries of the limitation or restriction  
3           within a reasonable time before it takes effect;  
4           and

5           “(B) a written notice of the date on which  
6           the limitation or restriction ceases to apply  
7           within a reasonable time before such date.

8           “(2) CHANGE IN TIME OF NOTICE.—The Sec-  
9           retary may prescribe that a notice under paragraph  
10          (1) may be given within a reasonable period of time  
11          after the effective date or date of cessation of any  
12          benefit limitation or restriction if providing such no-  
13          tice before such date is not practicable due to events  
14          that were unforeseeable or circumstances beyond the  
15          control of the plan administrator.

16          “(3) FORM AND MANNER OF NOTICE.—The  
17          Secretary may prescribe the form and manner of the  
18          notice under this subsection. Such notice shall be  
19          written in a manner calculated to be understood by  
20          the average plan participant and may be delivered in  
21          written, electronic, or other appropriate form to the  
22          extent that such form is reasonably accessible to the  
23          recipient.”.

24          (b) AMENDMENTS OF ERISA.—

1           (1) IN GENERAL.—Section 101 of the Employee  
2 Retirement Income Security Act of 1974 (29 U.S.C.  
3 1021), as amended by this Act, is amended by—

4                   (A) redesignating subsection (l) as sub-  
5 section (m); and

6                   (B) inserting after subsection (k) the fol-  
7 lowing:

8           “(1) NOTICE OF FUNDING BENEFIT LIMITATIONS  
9 AND RESTRICTIONS ON BENEFIT INCREASES.—

10                   “(1) IN GENERAL.—The plan administrator of  
11 a single-employer plan that becomes subject to any  
12 benefit limitation or restriction under section 305  
13 shall provide—

14                           “(A) a written notice to plan participants  
15 and beneficiaries of the limitation or restriction  
16 within a reasonable time before it takes effect;  
17 and

18                           “(B) a written notice of the date on which  
19 the limitation or restriction ceases to apply  
20 within a reasonable time before such date.

21           “(2) CHANGE IN TIME OF NOTICE.—The Sec-  
22 retary of Treasury may prescribe that a notice under  
23 paragraph (1) may be given within a reasonable pe-  
24 riod of time after the effective date or date of ces-  
25 sation of any benefit limitation or restriction if pro-

1       viding such notice before such date is not practicable  
2       due to events that were unforeseeable or cir-  
3       cumstances beyond the control of the plan adminis-  
4       trator.

5               “(3) FORM AND MANNER OF NOTICE.—The  
6       Secretary of Treasury may prescribe the form and  
7       manner of the notice under this subsection. Such no-  
8       tice shall be written in a manner calculated to be un-  
9       derstood by the average plan participant and may be  
10      delivered in written, electronic, or other appropriate  
11      form to the extent that such form is reasonably ac-  
12      cessible to the recipient.”.

13              (2) PENALTY.—Section 502(c)(7) of the Em-  
14      ployee Retirement Income Security Act of 1974 (29  
15      U.S.C. 1132(c)(7)), as amended by this Act, is  
16      amended by striking “subsection (i) or (j)” and in-  
17      serting “subsection (i), (j), or (l)”.

18              (c) EFFECTIVE DATE.—The amendments made by  
19      this section shall apply to plan years beginning after De-  
20      cember 31, 2006.

21      **SEC. 403. NOTICE OF BANKRUPTCY FILING.**

22              (a) AMENDMENT OF INTERNAL REVENUE CODE.—

23                      (1) IN GENERAL.—Section 4980K of the Inter-  
24      nal Revenue Code, as amended by section 402, is  
25      amended—

1 (A) in subsection (a), by striking “sub-  
2 section (e) or (f)” and inserting “subsection (e),  
3 (f), or (g)”;

4 (B) in subsection (c)—

5 (i) by striking “subsection (e) or (f)”  
6 each place it appears and inserting “sub-  
7 section (e), (f), or (g)”;

8 (ii) in paragraph (3)(C), by striking  
9 “(e) and (f)” and inserting “(e), (f), and  
10 (g)”;

11 (C) by adding at the end the following:

12 “(g) REQUIREMENT TO NOTICE OF BANKRUPTCY  
13 FILING.—

14 “(1) NOTICE TO PLAN ADMINISTRATOR.—A  
15 contributing sponsor of a defined benefit plan which  
16 is a single-employer plan shall provide a written no-  
17 tice to the plan administrator when such sponsor  
18 files (or within a reasonable time after such sponsor  
19 has had filed against such sponsor) a petition seek-  
20 ing liquidation or reorganization in a case under title  
21 11, United States Code, or under any similar Fed-  
22 eral law or law of a State or political subdivision of  
23 a State.

24 “(2) NOTICE TO PARTICIPANTS.—The plan ad-  
25 ministrator of a plan described in paragraph (1)

1 shall, within a reasonable time after such adminis-  
2 trator receives a notice provided under paragraph  
3 (1) or otherwise has reason to know that the plan  
4 sponsor has filed (or has had filed against the spon-  
5 sor) a petition described under paragraph (1), pro-  
6 vide to participants and beneficiaries of the plan a  
7 written notice of—

8 “(A) the filing of such petition; and

9 “(B) the limits on the guarantee of the  
10 Pension Benefit Guaranty Corporation under  
11 title IV of the Employee Retirement Income Se-  
12 curity Act of 1974 if the plan is terminated  
13 while underfunded, taking into account the fil-  
14 ing of such petition.

15 “(3) FORM AND MANNER.—The Secretary of  
16 Labor may prescribe the form and manner of the  
17 notice under this subsection. Such notice shall be  
18 written in a manner calculated to be understood by  
19 the average plan participant and may be delivered in  
20 written, electronic, or other appropriate form to the  
21 extent that such form is reasonably accessible to the  
22 recipient.”.

23 (b) AMENDMENT OF ERISA.—

1           (1) IN GENERAL.—Section 101 of the Employee  
2 Retirement Income Security Act of 1974 (29 U.S.C.  
3 1021), as amended by this Act, is amended by—

4                   (A) redesignating subsection (m) as sub-  
5 section (n); and

6                   (B) inserting after subsection (l) the fol-  
7 lowing:

8           “(m) NOTICE OF BANKRUPTCY FILING.—

9                   “(1) NOTICE TO PLAN ADMINISTRATOR.—A  
10 contributing sponsor of a defined benefit plan that  
11 is a single-employer plan shall provide a written no-  
12 tice to the plan administrator when such sponsor  
13 files (or within a reasonable time after such sponsor  
14 has had filed against such sponsor) a petition seek-  
15 ing liquidation or reorganization in a case under title  
16 11, United States Code, or under any similar Fed-  
17 eral law or law of a State or political subdivision of  
18 a State.

19                   “(2) NOTICE TO PARTICIPANTS.—The plan ad-  
20 ministrator of a defined benefit plan that is a single-  
21 employer plan shall, within a reasonable time after  
22 such administrator receives a notice provided under  
23 paragraph (1) or otherwise has reason to know that  
24 the plan sponsor has filed (or has had filed against  
25 the sponsor) a petition described under paragraph

1 (1), provide to participants and beneficiaries of the  
2 plan a written notice of—

3 “(A) the filing of such petition; and

4 “(B) the limits on the guarantee of the  
5 Pension Benefit Guaranty Corporation under  
6 title IV if the plan is terminated while under-  
7 funded, taking into account the filing of such  
8 petition.

9 “(3) FORM AND MANNER OF NOTICE.—The  
10 Secretary may prescribe the form and manner of the  
11 notice under this subsection. Such notice shall be  
12 written in a manner calculated to be understood by  
13 the average plan participant and may be delivered in  
14 written, electronic, or other appropriate form to the  
15 extent that such form is reasonably accessible to the  
16 recipient.”.

17 (2) PENALTY.—Section 502(e)(7) of the Em-  
18 ployee Retirement Income Security Act of 1974 (29  
19 U.S.C. 1132(e)(7)), as amended by this Act, is  
20 amended by striking “(j), or (l)” and inserting “(j),  
21 (l), or (m)”.

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

1 **TITLE V—IMPROVEMENTS IN**  
2 **FUNDING RULES FOR MULTI-**  
3 **EMPLOYER DEFINED BENE-**  
4 **FITS PENSION PLANS AND RE-**  
5 **LATED PROVISIONS**

6 **SEC. 501. DEDUCTION LIMITS FOR MULTIEMPLOYER**  
7 **PLANS.**

8 (a) INCREASE IN DEDUCTION.—Section  
9 404(a)(1)(D) of the Internal Revenue Code of 1986, as  
10 amended by this Act, is amended to read as follows:

11 “(D) AMOUNT DETERMINED ON BASIS OF  
12 UNFUNDED CURRENT LIABILITY.—

13 “(i) IN GENERAL.—In the case of a  
14 defined benefit plan which is a multiem-  
15 ployer plan, except as provided in regula-  
16 tions, the maximum amount deductible  
17 under the limitations of this paragraph  
18 shall not be less than the unfunded current  
19 liability of the plan.

20 “(ii) UNFUNDED CURRENT LIABIL-  
21 ITY.—For purposes of clause (i), the term  
22 ‘unfunded current liability’ means the ex-  
23 cess (if any) of—

1                   “(I) 130 percent of the current  
2                   liability of the plan determined under  
3                   section 431(c)(6)(C), over

4                   “(II) the value of the plan’s as-  
5                   sets determined under section  
6                   431(c)(2).”.

7           (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
8 WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
9 DEFINED BENEFIT PLANS.—

10           (1) IN GENERAL.—Section 404(a)(7)(C) of such  
11 Code, as amended by this Act, is amended by adding  
12 at the end the following new clause:

13                   “(v) MULTIEMPLOYER PLANS.—In ap-  
14                   plying this paragraph, any multiemployer  
15                   plan shall not be taken into account.”.

16           (2) CONFORMING AMENDMENT.—Section  
17 404(a)(7)(A) of such Code is amended by striking  
18 the last sentence.

19           (c) EFFECTIVE DATES.—

20           (1) DEDUCTION LIMIT.—The amendment made  
21 by subsection (a) shall apply to years beginning after  
22 December 31, 2006.

23           (2) EXCEPTION.—The amendments made by  
24 subsection (b) shall apply to years beginning after  
25 December 31, 2005.

1 **SEC. 502. MULTIEMPLOYER DEFINED BENEFIT PLAN FUND-**  
2 **ING NOTICES.**

3 (a) AMENDMENT OF INTERNAL REVENUE CODE.—

4 (1) IN GENERAL.—Chapter 43 of the Internal  
5 Revenue Code of 1986 (relating to qualified pension,  
6 etc., plans), as amended by this Act, is amended by  
7 adding at the end the following new section:

8 **“SEC. 4980L. FAILURE OF MULTIEMPLOYER DEFINED BEN-**  
9 **EFIT PLANS TO PROVIDE FUNDING NOTICE.**

10 “(a) IMPOSITION OF TAX.—There is hereby imposed  
11 a tax on the failure of a multiemployer defined benefit  
12 plan to meet the requirements of subsection (e) with re-  
13 spect to any participant or beneficiary, labor organization  
14 representing such participants or beneficiaries, employer  
15 that has an obligation to contribute under the plan, and  
16 to the Pension Benefit Guaranty Corporation.

17 “(b) AMOUNT OF TAX.—

18 “(1) IN GENERAL.—The amount of the tax im-  
19 posed by subsection (a) on any failure with respect  
20 to any recipient described under subsection (a) shall  
21 be \$100 for each day in the noncompliance period  
22 with respect to the failure.

23 “(2) NONCOMPLIANCE PERIOD.—For purposes  
24 of this section, the term ‘noncompliance period’  
25 means, with respect to any failure, the period begin-  
26 ning on the date the failure first occurs and ending

1 on the date the statement to which the failure re-  
2 lates is provided or the failure is otherwise corrected.

3 “(c) LIMITATIONS ON AMOUNT OF TAX.—

4 “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
5 DISCOVERED AND REASONABLE DILIGENCE EXER-  
6 CISED.—No tax shall be imposed by subsection (a)  
7 on any failure during any period for which it is es-  
8 tablished to the satisfaction of the Secretary that  
9 any person subject to liability for tax under sub-  
10 section (d) did not know that the failure existed and  
11 exercised reasonable diligence to meet the require-  
12 ments of subsection (e).

13 “(2) TAX NOT TO APPLY TO FAILURES COR-  
14 RECTED WITHIN 30 DAYS.—No tax shall be imposed  
15 by subsection (a) on any failure if—

16 “(A) any person subject to liability for the  
17 tax under subsection (d) exercised reasonable  
18 diligence to meet the requirements of subsection  
19 (e), and

20 “(B) such person provides the statement  
21 described in subsection (e) during the 30-day  
22 period beginning on the first date such person  
23 knew, or exercising reasonable diligence should  
24 have known, that such failure existed.

1           “(3) OVERALL LIMITATION FOR UNINTEN-  
2           TIONAL FAILURES.—If the person subject to liability  
3           for tax under subsection (d) exercised reasonable  
4           diligence to meet the requirements of subsection (e),  
5           the tax imposed by subsection (a) for failures during  
6           the taxable year of the trust forming part of the  
7           plan shall not exceed \$500,000. For purposes of the  
8           preceding sentence, all multiemployer plans of which  
9           the same trust forms a part shall be treated as 1  
10          plan.

11           “(4) WAIVER BY SECRETARY.—In the case of a  
12          failure which is due to reasonable cause and not to  
13          willful neglect, the Secretary may waive part or all  
14          of the tax imposed by subsection (a) to the extent  
15          that the payment of such tax would be excessive or  
16          otherwise inequitable relative to the failure involved.

17          “(d) LIABILITY FOR TAX.—The plan shall be liable  
18          for the tax imposed by subsection (a).

19          “(e) PLAN FUNDING NOTICE.—

20                 “(1) IN GENERAL.—The administrator of a de-  
21                 fined benefit plan which is a multiemployer plan  
22                 shall for each plan year provide a plan funding no-  
23                 tice to each affected party and the Pension Benefit  
24                 Guaranty Corporation.

25                 “(2) INFORMATION CONTAINED IN NOTICES.—

1           “(A) IDENTIFYING INFORMATION.—Each  
2 notice required under paragraph (1) shall con-  
3 tain identifying information, including the name  
4 of the plan, the address and phone number of  
5 the plan administrator and the plan’s principal  
6 administrative officer, each plan sponsor’s em-  
7 ployer identification number, and the plan num-  
8 ber of the plan.

9           “(B) SPECIFIC INFORMATION.—A plan  
10 funding notice under paragraph (1) shall in-  
11 clude—

12           “(i) a statement as to whether the  
13 percentage which the amount determined  
14 under section 431(c)(6)(A)(ii) bears to the  
15 amount determined under section  
16 431(c)(6)(C) is at least 100 percent (and, if  
17 not, the actual percentage);

18           “(ii) a statement of the value of the  
19 plan’s assets, the amount of benefit pay-  
20 ments, and the ratio of the assets to the  
21 payments for the plan year to which the  
22 notice relates;

23           “(iii) a summary of the rules gov-  
24 erning insolvent multiemployer plans, in-  
25 cluding the limitations on benefit payments

1 and any potential benefit reductions and  
2 suspensions (and the potential effects of  
3 such limitations, reductions, and suspen-  
4 sions on the plan); and

5 “(iv) a general description of the ben-  
6 efits under the plan which are eligible to be  
7 guaranteed by the Pension Benefit Guar-  
8 anty Corporation under title IV of the Em-  
9 ployee Retirement Income Security Act of  
10 1974, along with an explanation of the lim-  
11 itations on the guarantee and the cir-  
12 cumstances under which such limitations  
13 apply.

14 “(C) OTHER INFORMATION.—Each notice  
15 under paragraph (1) shall include any addi-  
16 tional information which the plan administrator  
17 elects to include to the extent not inconsistent  
18 with regulations prescribed by the Secretary of  
19 Labor.

20 “(3) TIME FOR PROVIDING NOTICE.—Any no-  
21 tice under paragraph (1) shall be provided not later  
22 than 2 months after the deadline (including exten-  
23 sions) for filing the return described under section  
24 6058 for the plan year to which the notice relates.

1           “(4) FORM AND MANNER.—Any notice under  
2 paragraph (1)—

3           “(A) shall be provided in a form and man-  
4 ner prescribed in regulations of the Secretary of  
5 Labor,

6           “(B) shall be written in a manner so as to  
7 be understood by the average plan participant,  
8 and

9           “(C) may be provided in written, elec-  
10 tronic, or other appropriate form to the extent  
11 such form is reasonably accessible to the recipi-  
12 ent.”.

13           (2) CLERICAL AMENDMENT.—The table of sec-  
14 tions for chapter 43 of such Code, as amended by  
15 this Act, is amended by adding at the end the fol-  
16 lowing new item:

“Sec. 4980L. Failure of multiemployer defined benefit plans to provide funding notice.”.

17           (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall take effect on the date of enactment of  
19 this Act.

20 **SEC. 503. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**  
21 **TIEMPLOYER HEALTH PLAN.**

22           (a) IN GENERAL.—Section 420(e) of the Internal  
23 Revenue Code of 1986 (relating to definitions and special

1 rules) is amended by adding at the end the following new  
2 paragraph:

3           “(5) APPLICATION TO MULTIEMPLOYER  
4 PLAN.—In the case of any plan to which section  
5 404(c) applies (or any successor plan primarily cov-  
6 ering employees in the building and construction in-  
7 dustry)—

8           “(A) the prohibition under subsection (a)  
9 on the application of this section to a multiem-  
10 ployer plan shall not apply, and

11           “(B) this section shall be applied to any  
12 such plan—

13           “(i) by treating any reference in this  
14 section to an employer as a reference to all  
15 employers maintaining the plan (or, if ap-  
16 propriate, the plan sponsor), and

17           “(ii) in accordance with such modi-  
18 fications of this section (and the provisions  
19 of this title and the Employee Retirement  
20 Income Security Act of 1974 relating to  
21 this section) as the Secretary determines  
22 appropriate to reflect the fact the plan is  
23 not maintained by a single employer.”

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to transfers made in taxable years  
3 beginning after December 31, 2004.

4 **SEC. 504. ADMINISTRATIVE PROVISIONS.**

5 (a) AUTHORITY OF THE SECRETARY OF THE TREAS-  
6 URY.—The Secretary of the Treasury shall have the au-  
7 thority to prescribe rules applicable to the statements re-  
8 quired under section 4980K(f) of the Internal Revenue  
9 Code of 1986 (as added by this Act) and section 101(l)  
10 of the Employee Retirement Income Security Act of 1974  
11 (as added by this Act).

12 (b) AUTHORITY OF THE SECRETARY OF LABOR.—  
13 The Secretary of Labor shall have the authority to pre-  
14 scribe rules applicable to the statements required under—

15 (1) section 4980K(g) of the Internal Revenue  
16 Code of 1986 (as added by this Act) and section  
17 101(m) of the Employee Retirement Income Secu-  
18 rity Act of 1974 (as added by this Act); and

19 (2) section 4980L of such Code (as added by  
20 this Act).

1 **TITLE VI—PBGC PREMIUM AND**  
 2 **GUARANTEE PROVISIONS**

3 **SEC. 601. INCREASES IN PBGC PREMIUMS FOR SINGLE-EM-**  
 4 **PLOYER PLANS.**

5 (a) **FLAT-RATE PREMIUMS.**—Section 4006(a)(3) of  
 6 the Employee Retirement Income Security Act of 1974  
 7 (29 U.S.C. 1306(a)(3)) is amended—

8 (1) in subparagraph (A)(i), by inserting “(or  
 9 for plan years beginning after December 31, 2005,  
 10 the amount determined under subparagraph (F))”  
 11 after “\$19”; and

12 (2) by adding at the end the following:

13 “(F) **AMOUNT OF FLAT-RATE PREMIUM.**—

14 “(i) **IN GENERAL.**—The amount de-  
 15 termined under this subparagraph is the  
 16 greater of \$30 or in the case of plan years  
 17 beginning after December 31, 2006, the  
 18 adjusted amount determined under clause  
 19 (ii).

20 “(ii) **ADJUSTED AMOUNT.**—The ad-  
 21 justed amount determined under this  
 22 clause is the product derived by multi-  
 23 plying \$30 by the ratio of—

24 “(I) the contribution and benefit  
 25 base (determined under section 230 of

1 the Social Security Act) in effect in  
 2 the calendar year in which the plan  
 3 year begins, to

4 “(II) the contribution and benefit  
 5 base in effect in 2006.

6 “(iii) ROUNDING.—If the amount de-  
 7 termined under clause (ii) is not a multiple  
 8 of \$1, such product shall be rounded to the  
 9 nearest multiple of \$1.”.

10 (b) RISK-BASED PREMIUMS.—

11 (1) YEARS BEFORE NEW FUNDING RULES TAKE  
 12 EFFECT.—Section 4006(a)(3)(E) of the Employee  
 13 Retirement Income Security Act (29 U.S.C.  
 14 1306(a)(3)(E)) is amended—

15 (A) in clause (ii), by striking “unfunded  
 16 vested benefits” and inserting “unfunded cur-  
 17 rent liability ”; and

18 (B) in clause (iii)—

19 (i) by striking subclause (I) and in-  
 20 sserting:

21 “(I) Except as provided in sub-  
 22 clause (II) or (III), the term ‘un-  
 23 funded current liability’ has the mean-  
 24 ing given such term by section  
 25 302(d)(8)(A).”, and

1 (ii) by striking “vested” before “bene-  
2 fits” in subclause (II).

3 (2) YEARS TO WHICH NEW FUNDING RULES  
4 APPLY.—Section 4006(a)(3)(E) of the Employee Re-  
5 tirement Income Security Act (29 U.S.C.  
6 1306(a)(3)(E)) is amended—

7 (A) in clause (ii), by striking “unfunded  
8 current liability” and inserting “unfunded tar-  
9 get liability (as determined under section 303)”;  
10 and

11 (B) by striking clauses (iii) and (iv).

12 (c) EFFECTIVE DATES.—

13 (1) IN GENERAL.—The amendments made by  
14 subsections (a) and (b)(1) shall apply to plan years  
15 beginning after December 31, 2005.

16 (2) NEW RULES.—The amendments made by  
17 subsection (b)(2) shall apply to plan years beginning  
18 after December 31, 2006.

19 **SEC. 602. RULES RELATING TO BANKRUPTCY OF EM-**  
20 **PLOYER.**

21 (a) GUARANTEE.—Section 4022 of the Employee Re-  
22 tirement Income Security Act of 1974 (29 U.S.C. 1322),  
23 as amended by this Act, is amended by adding at the end  
24 the following:

1           “(i) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
2 MINATION DATE.—If a contributing sponsor of a plan has  
3 filed or has had filed against such person a petition seek-  
4 ing liquidation or reorganization in a case under title 11,  
5 United States Code, or under any similar Federal law or  
6 law of a State or political subdivision, and the case has  
7 not been dismissed as of the termination date, then this  
8 section shall be applied by treating the date such petition  
9 was filed as the date of plan termination.”.

10           (b) ALLOCATION OF ASSETS AMONG PRIORITY  
11 GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044  
12 of the Employee Retirement Income Security Act of 1974  
13 (29 U.S.C. 1344) is amended by adding at the end the  
14 following:

15           “(e) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
16 MINATION DATE.—If a contributing sponsor of a plan has  
17 filed or has had filed against such person a petition seek-  
18 ing liquidation or reorganization in a case under title 11,  
19 United States Code, or under any similar Federal law or  
20 law of a State or political subdivision, and the case has  
21 not been dismissed as of the termination date, then sub-  
22 section (a)(3) shall be applied by treating the date such  
23 petition was filed as the termination date of the plan.”.

24           (c) EFFECTIVE DATE.—The amendments made this  
25 section shall apply with respect to proceedings initiated

1 under title 11, United States Code, or under any similar  
2 Federal law or law of a State or political subdivision, on  
3 or after the date that is 30 days after the date of enact-  
4 ment of this Act.

5 **SEC. 603. LIMITATION ON PBGC GUARANTEE OF SHUT-**  
6 **DOWN AND OTHER BENEFITS.**

7 (a) IN GENERAL.—Section 4022(b) of the Employee  
8 Retirement Income Security Act of 1974 (29 U.S.C.  
9 1322(b)) is amended by adding at the end the following:

10 “(8) If a benefit is payable by reason of—  
11 “(A) a plant shutdown or similar event; or  
12 “(B) any event other than attainment of  
13 any age, performance of any service, receipt or  
14 derivation of any compensation, or the occur-  
15 rence of death or disability,  
16 this section shall be applied as if a plan amendment  
17 had been adopted on the date such event occurred  
18 that provides for the payment of such benefit.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 this section shall apply to benefits that become payable  
21 as a result of an event that occurs after July 26, 2005.

22 **SEC. 604. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**  
23 **PLOYERS.**

24 (a) IN GENERAL.—Subparagraph (A) of section  
25 4006(a)(3) of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1306(a)(3)(A)), as amended by  
2 this Act, is amended—

3 (1) in clause (i), by inserting “other than a new  
4 single-employer plan (as defined in subparagraph  
5 (G)) maintained by a small employer (as so de-  
6 fined),” after “single-employer plan,”

7 (2) in clause (iii), by striking the period at the  
8 end and inserting “, and”, and

9 (3) by adding at the end the following new  
10 clause:

11 “(iv) in the case of a new single-employer plan  
12 (as defined in subparagraph (G)) maintained by a  
13 small employer (as so defined) for the plan year, \$5  
14 for each individual who is a participant in such plan  
15 during the plan year.”

16 (b) DEFINITION OF NEW SINGLE-EMPLOYER  
17 PLAN.—Section 4006(a)(3) of the Employee Retirement  
18 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is  
19 amended by adding at the end the following new subpara-  
20 graph:

21 “(G)(i) For purposes of this paragraph, a single-em-  
22 ployer plan maintained by a contributing sponsor shall be  
23 treated as a new single-employer plan for each of its first  
24 5 plan years if, during the 36-month period ending on the  
25 date of the adoption of such plan, the sponsor or any

1 member of such sponsor's controlled group (or any prede-  
2 cessor of either) did not establish or maintain a plan to  
3 which this title applies with respect to which benefits were  
4 accrued for substantially the same employees as are in the  
5 new single-employer plan.

6       “(ii)(I) For purposes of this paragraph, the term  
7 ‘small employer’ means an employer which on the first day  
8 of any plan year has, in aggregation with all members of  
9 the controlled group of such employer, 100 or fewer em-  
10 ployees.

11       “(II) In the case of a plan maintained by two or more  
12 contributing sponsors that are not part of the same con-  
13 trolled group, the employees of all contributing sponsors  
14 and controlled groups of such sponsors shall be aggregated  
15 for purposes of determining whether any contributing  
16 sponsor is a small employer.”

17       (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to plans first effective after Decem-  
19 ber 31, 2005.

20 **SEC. 605. PBGC PREMIUMS FOR SMALL AND NEW PLANS.**

21       (a) NEW PLANS.—Subparagraph (E) of section  
22 4006(a)(3) of the Employee Retirement Income Security  
23 Act of 1974 (29 U.S.C. 1306(a)(3)(E)), as amended by  
24 this Act, is amended by adding at the end the following  
25 new clause:

1       “(iii) In the case of a new defined benefit plan, the  
2 amount determined under clause (ii) for any plan year  
3 shall be an amount equal to the product of the amount  
4 determined under clause (ii) and the applicable percent-  
5 age. For purposes of this clause, the term ‘applicable per-  
6 centage’ means—

7               “(I) 0 percent, for the first plan year.

8               “(II) 20 percent, for the second plan year.

9               “(III) 40 percent, for the third plan year.

10              “(IV) 60 percent, for the fourth plan year.

11              “(V) 80 percent, for the fifth plan year.

12 For purposes of this clause, a defined benefit plan (as de-  
13 fined in section 3(35)) maintained by a contributing spon-  
14 sor shall be treated as a new defined benefit plan for each  
15 of its first 5 plan years if, during the 36-month period  
16 ending on the date of the adoption of the plan, the sponsor  
17 and each member of any controlled group including the  
18 sponsor (or any predecessor of either) did not establish  
19 or maintain a plan to which this title applies with respect  
20 to which benefits were accrued for substantially the same  
21 employees as are in the new plan.”

22       (b) SMALL PLANS.—Paragraph (3) of section  
23 4006(a) of the Employee Retirement Income Security Act  
24 of 1974 (29 U.S.C. 1306(a)), as amended by this Act, is  
25 amended—

1           (1) by striking “The” in subparagraph (E)(i)  
2           and inserting “Except as provided in subparagraph  
3           (H), the”, and

4           (2) by inserting after subparagraph (G) the fol-  
5           lowing new subparagraph:

6           “(H)(i) In the case of an employer who has 25 or  
7           fewer employees on the first day of the plan year, the addi-  
8           tional premium determined under subparagraph (E) for  
9           each participant shall not exceed \$5 multiplied by the  
10          number of participants in the plan as of the close of the  
11          preceding plan year.

12          “(ii) For purposes of clause (i), whether an employer  
13          has 25 or fewer employees on the first day of the plan  
14          year is determined by taking into consideration all of the  
15          employees of all members of the contributing sponsor’s  
16          controlled group. In the case of a plan maintained by two  
17          or more contributing sponsors, the employees of all con-  
18          tributing sponsors and their controlled groups shall be ag-  
19          gregated for purposes of determining whether the 25-or-  
20          fewer-employees limitation has been satisfied.”

21          (c) EFFECTIVE DATES.—

22                 (1) SUBSECTION (a).—The amendments made  
23                 by subsection (a) shall apply to plans first effective  
24                 after December 31, 2005.

1           (2) SUBSECTION (b).—The amendments made  
2           by subsection (b) shall apply to plan years beginning  
3           after December 31, 2005.

4 **SEC. 606. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**  
5 **PREMIUM OVERPAYMENT REFUNDS.**

6           (a) IN GENERAL.—Section 4007(b) of the Employ-  
7           ment Retirement Income Security Act of 1974 (29 U.S.C.  
8           1307(b)) is amended—

9                   (1) by striking “(b)” and inserting “(b)(1)”,  
10           and

11                   (2) by inserting at the end the following new  
12           paragraph:

13           “(2) The corporation is authorized to pay, subject to  
14           regulations prescribed by the corporation, interest on the  
15           amount of any overpayment of premium refunded to a des-  
16           ignated payor. Interest under this paragraph shall be cal-  
17           culated at the same rate and in the same manner as inter-  
18           est is calculated for underpayments under paragraph (1).”

19           (b) EFFECTIVE DATE.—The amendments made by  
20           subsection (a) shall apply to interest accruing for periods  
21           beginning not earlier than the date of the enactment of  
22           this Act.

1 **SEC. 607. RULES FOR SUBSTANTIAL OWNER BENEFITS IN**  
2 **TERMINATED PLANS.**

3 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—  
4 Section 4022(b)(5) of the Employee Retirement Income  
5 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended  
6 to read as follows:

7 “(5)(A) For purposes of this paragraph, the term  
8 ‘majority owner’ means an individual who, at any time  
9 during the 60-month period ending on the date the deter-  
10 mination is being made—

11 “(i) owns the entire interest in an unincor-  
12 porated trade or business,

13 “(ii) in the case of a partnership, is a partner  
14 who owns, directly or indirectly, 50 percent or more  
15 of either the capital interest or the profits interest  
16 in such partnership, or

17 “(iii) in the case of a corporation, owns, directly  
18 or indirectly, 50 percent or more in value of either  
19 the voting stock of that corporation or all the stock  
20 of that corporation.

21 “(B) In the case of a participant who is a majority  
22 owner, the amount of benefits guaranteed under this sec-  
23 tion shall equal the product of—

24 “(i) a fraction (not to exceed 1) the numerator  
25 of which is the number of years from the later of the  
26 effective date or the adoption date of the original

1 plan to the termination date, and the denominator  
2 of which is 10, and

3 “(ii) the amount of benefits that would be guar-  
4 anteed under this section if the participant were not  
5 a majority owner.

6 “(C) For purposes of this paragraph, the constructive  
7 ownership rules of section 1563(e) of the Internal Revenue  
8 Code of 1986 (other than paragraph (3)(C) thereof) shall  
9 apply, including the application of such rules under section  
10 414(c) of such Code.”.

11 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

12 (1) Section 4044(a)(4)(B) of the Employee Re-  
13 tirement Income Security Act of 1974 (29 U.S.C.  
14 1344(a)(4)(B)) is amended by striking “section  
15 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

16 (2) Section 4044(b) of such Act (29 U.S.C.  
17 1344(b)) is amended—

18 (A) by striking “(5)” in paragraph (2) and  
19 inserting “(4), (5),” and

20 (B) by redesignating paragraphs (3)  
21 through (6) as paragraphs (4) through (7), re-  
22 spectively, and by inserting after paragraph (2)  
23 the following new paragraph:

24 “(3) If assets available for allocation under  
25 paragraph (4) of subsection (a) are insufficient to

1 satisfy in full the benefits of all individuals who are  
2 described in that paragraph, the assets shall be allo-  
3 cated first to benefits described in subparagraph (A)  
4 of that paragraph. Any remaining assets shall then  
5 be allocated to benefits described in subparagraph  
6 (B) of that paragraph. If assets allocated to such  
7 subparagraph (B) are insufficient to satisfy in full  
8 the benefits described in that subparagraph, the as-  
9 sets shall be allocated pro rata among individuals on  
10 the basis of the present value (as of the termination  
11 date) of their respective benefits described in that  
12 subparagraph.”

13 (c) CONFORMING AMENDMENTS.—

14 (1) Section 4021 of the Employee Retirement  
15 Income Security Act of 1974 (29 U.S.C. 1321) is  
16 amended—

17 (A) in subsection (b)(9), by striking “as  
18 defined in section 4022(b)(6)”, and

19 (B) by adding at the end the following new  
20 subsection:

21 “(d)(1) For purposes of subsection (b)(9), the term  
22 ‘substantial owner’ means an individual who, at any time  
23 during the 60-month period ending on the date the deter-  
24 mination is being made—

1           “(A) owns the entire interest in an unincor-  
2           porated trade or business,

3           “(B) in the case of a partnership, is a partner  
4           who owns, directly or indirectly, more than 10 per-  
5           cent of either the capital interest or the profits inter-  
6           est in such partnership, or

7           “(C) in the case of a corporation, owns, directly  
8           or indirectly, more than 10 percent in value of either  
9           the voting stock of that corporation or all the stock  
10          of that corporation.

11          “(2) For purposes of this subsection, the constructive  
12          ownership rules of section 1563(e) of the Internal Revenue  
13          Code of 1986 (other than paragraph (3)(C) thereof) shall  
14          apply, including the application of such rules under section  
15          414(e) of such Code.”

16                 (2) Section 4043(c)(7) of such Act (29 U.S.C.  
17          1343(c)(7)) is amended by striking “section  
18          4022(b)(6)” and inserting “section 4021(d)”.

19          (d) EFFECTIVE DATES.—

20                 (1) IN GENERAL.—Except as provided in para-  
21          graph (2), the amendments made by this section  
22          shall apply to plan terminations—

23                         (A) under section 4041(c) of the Employee  
24                         Retirement Income Security Act of 1974 (29  
25                         U.S.C. 1341(c)) with respect to which notices

1 of intent to terminate are provided under sec-  
2 tion 4041(a)(2) of such Act (29 U.S.C.  
3 1341(a)(2)) after December 31, 2005, and

4 (B) under section 4042 of such Act (29  
5 U.S.C. 1342) with respect to which proceedings  
6 are instituted by the corporation after such  
7 date.

8 (2) CONFORMING AMENDMENTS.—The amend-  
9 ments made by subsection (c) shall take effect on  
10 January 1, 2006.

11 **SEC. 608. ACCELERATION OF PBGC COMPUTATION OF BEN-**  
12 **EFITS ATTRIBUTABLE TO RECOVERIES FROM**  
13 **EMPLOYERS.**

14 (a) MODIFICATION OF AVERAGE RECOVERY PER-  
15 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-  
16 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS  
17 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the  
18 Employee Retirement Income Security Act of 1974 (29  
19 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

20 “(ii) notices of intent to terminate  
21 were provided (or in the case of a termi-  
22 nation by the corporation, a notice of de-  
23 termination under section 4042 was  
24 issued) during the 5-Federal fiscal year pe-  
25 riod ending with the third fiscal year pre-

1 ceding the fiscal year in which occurs the  
2 date of the notice of intent to terminate  
3 (or the notice of determination under sec-  
4 tion 4042) with respect to the plan termi-  
5 nation for which the recovery ratio is being  
6 determined.”

7 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR  
8 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
9 PARTICIPANTS AND BENEFICIARIES.—

10 (1) SINGLE-EMPLOYER PLAN BENEFITS GUAR-  
11 ANTEED.—Section 4022(c)(3)(A) of the Employee  
12 Retirement Income Security Act of 1974 (29 U.S.C.  
13 13) is amended to read as follows:

14 “(A) IN GENERAL.—Except as provided in  
15 subparagraph (C), the term ‘recovery ratio’  
16 means the ratio which—

17 “(i) the sum of the values of all recov-  
18 eries under section 4062, 4063, or 4064,  
19 determined by the corporation in connec-  
20 tion with plan terminations described  
21 under subparagraph (B), bears to

22 “(ii) the sum of all unfunded benefit  
23 liabilities under such plans as of the termi-  
24 nation date in connection with any such  
25 prior termination.”.

1           (2) ALLOCATION OF ASSETS.—Section 4044 of  
2           the Employee Retirement Income Security Act of  
3           1974 (29 U.S.C. 1362) is amended by adding at the  
4           end the following new subsection:

5           “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR  
6 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
7 PARTICIPANTS AND BENEFICIARIES.—

8           “(1) IN GENERAL.—In the case of a terminated  
9           plan, the value of the recovery of liability under sec-  
10          tion 4062(c) allocable as a plan asset under this sec-  
11          tion for purposes of determining the amount of ben-  
12          efits payable by the corporation shall be determined  
13          by multiplying—

14                 “(A) the amount of liability under section  
15                 4062(c) as of the termination date of the plan,  
16                 by

17                 “(B) the applicable section 4062(c) recov-  
18                 ery ratio.

19          “(2) SECTION 4062(c) RECOVERY RATIO.—For  
20          purposes of this subsection—

21                 “(A) IN GENERAL.—Except as provided in  
22                 subparagraph (C), the term ‘section 4062(c) re-  
23                 covery ratio’ means the ratio which—

24                         “(i) the sum of the values of all recov-  
25                         eries under section 4062(c) determined by

1 the corporation in connection with plan  
2 terminations described under subparagraph  
3 (B), bears to

4 “(ii) the sum of all the amounts of li-  
5 ability under section 4062(c) with respect  
6 to such plans as of the termination date in  
7 connection with any such prior termi-  
8 nation.

9 “(B) PRIOR TERMINATIONS.—A plan ter-  
10 mination described in this subparagraph is a  
11 termination with respect to which—

12 “(i) the value of recoveries under sec-  
13 tion 4062(c) have been determined by the  
14 corporation, and

15 “(ii) notices of intent to terminate  
16 were provided (or in the case of a termi-  
17 nation by the corporation, a notice of de-  
18 termination under section 4042 was  
19 issued) during the 5-Federal fiscal year pe-  
20 riod ending with the third fiscal year pre-  
21 ceding the fiscal year in which occurs the  
22 date of the notice of intent to terminate  
23 (or the notice of determination under sec-  
24 tion 4042) with respect to the plan termi-

1           nation for which the recovery ratio is being  
2           determined.

3           “(C) EXCEPTION.—In the case of a termi-  
4           nated plan with respect to which the out-  
5           standing amount of benefit liabilities exceeds  
6           \$20,000,000, the term ‘section 4062(c) recovery  
7           ratio’ means, with respect to the termination of  
8           such plan, the ratio of—

9                   “(i) the value of the recoveries on be-  
10                  half of the plan under section 4062(c), to

11                   “(ii) the amount of the liability owed  
12                  under section 4062(c) as of the date of  
13                  plan termination to the trustee appointed  
14                  under section 4042 (b) or (c).

15           “(3) SUBSECTION NOT TO APPLY.—This sub-  
16           section shall not apply with respect to the deter-  
17           mination of—

18                   “(A) whether the amount of outstanding  
19                  benefit liabilities exceeds \$20,000,000, or

20                   “(B) the amount of any liability under sec-  
21                  tion 4062 to the corporation or the trustee ap-  
22                  pointed under section 4042 (b) or (c).

23           “(4) DETERMINATIONS.—Determinations under  
24           this subsection shall be made by the corporation.  
25           Such determinations shall be binding unless shown

1 by clear and convincing evidence to be unreason-  
2 able.”

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply for any termination for which no-  
5 tices of intent to terminate are provided (or in the case  
6 of a termination by the corporation, a notice of determina-  
7 tion under section 4042 under the Employee Retirement  
8 Income Security Act of 1974 is issued) on or after the  
9 date which is 30 days after the date of enactment of this  
10 section.

11 **TITLE VII—PROVISIONS RELAT-**  
12 **ING TO SPOUSAL PENSION**  
13 **PROTECTION**

14 **SEC. 701. JOINT STUDY OF APPLICATION OF SPOUSAL CON-**  
15 **SENT RULES TO DEFINED CONTRIBUTION**  
16 **PLANS.**

17 (a) STUDY.—The Secretary of Labor and the Sec-  
18 retary of the Treasury shall jointly conduct a study of the  
19 feasibility and desirability of extending the application of  
20 the requirements of section 205 of the Employee Retire-  
21 ment Income Security Act of 1974 and sections  
22 401(a)(11) and 417 of the Internal Revenue Code of 1986  
23 (relating to spousal consent requirements) to defined con-  
24 tribution plans to which such requirements do not apply.  
25 Such study shall include consideration of—

1           (1) any modifications of such requirements that  
2           are necessary to apply such requirements to such  
3           plans, and

4           (2) the feasibility of providing notice and spousal  
5           consent in 1 or more electronic forms that are ca-  
6           pable of authentication.

7           (b) REPORT.—Not later than 2 years after the date  
8           of the enactment of this Act, the Secretaries shall report  
9           the results of the study, together with any recommenda-  
10          tions for legislative changes, to the Committees on Ways  
11          and Means and Education and the Workforce of the  
12          House of Representatives and the Committees on Finance  
13          and Health, Education, Labor, and Pensions of the Sen-  
14          ate.

15 **SEC. 702. REGULATIONS ON TIME AND ORDER OF**  
16 **ISSUANCE OF DOMESTIC RELATIONS OR-**  
17 **DERS.**

18          Not later than 1 year after the date of the enactment  
19          of this Act, the Secretary of Labor shall issue regulations  
20          under section 206(d)(3) of the Employee Retirement Secu-  
21          rity Act of 1974 and section 414(p) of the Internal Rev-  
22          enue Code of 1986 which clarify that—

23               (1) a domestic relations order otherwise meet-  
24               ing the requirements to be a qualified domestic rela-  
25               tions order, including the requirements of section

1 206(d)(3)(D) of such Act and section 414(p)(3) of  
 2 such Code, shall not fail to be treated as a qualified  
 3 domestic relations order solely because—

4 (A) the order is issued after, or revises, an-  
 5 other domestic relations order or qualified do-  
 6 mestic relations order; or

7 (B) of the time at which it is issued; and

8 (2) any order described in paragraph (1) shall  
 9 be subject to the same requirements and protections  
 10 which apply to qualified domestic relations orders,  
 11 including the provisions of section 206(d)(3)(H) of  
 12 such Act and section 414(p)(7) of such Code.

13 **SEC. 703. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**  
 14 **ROAD RETIREMENT ANNUITIES INDE-**  
 15 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**  
 16 **PLOYEE.**

17 (a) IN GENERAL.—Section 2 of the Railroad Retire-  
 18 ment Act of 1974 (45 U.S.C. 231a) is amended—

19 (1) in subsection (c)(4)(i), by striking “(A) is  
 20 entitled to an annuity under subsection (a)(1) and  
 21 (B)”;

22 (2) in subsection (e)(5), by striking “or di-  
 23 vorced wife” the second place it appears.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect 1 year after the date of the  
3 enactment of this Act.

4 **SEC. 704. EXTENSION OF TIER II RAILROAD RETIREMENT**  
5 **BENEFITS TO SURVIVING FORMER SPOUSES**  
6 **PURSUANT TO DIVORCE AGREEMENTS.**

7 (a) IN GENERAL.—Section 5 of the Railroad Retire-  
8 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
9 at the end the following:

10 “(d) Notwithstanding any other provision of law, the  
11 payment of any portion of an annuity computed under sec-  
12 tion 3(b) to a surviving former spouse in accordance with  
13 a court decree of divorce, annulment, or legal separation  
14 or the terms of any court-approved property settlement  
15 incident to any such court decree shall not be terminated  
16 upon the death of the individual who performed the service  
17 with respect to which such annuity is so computed unless  
18 such termination is otherwise required by the terms of  
19 such court decree.”

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall take effect 1 year after the date of the  
22 enactment of this Act.

23 **SEC. 705. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**  
24 **NUITY OPTION.**

25 (a) AMENDMENTS TO INTERNAL REVENUE CODE.—

1           (1) ELECTION OF SURVIVOR ANNUITY.—Section  
2           417(a)(1)(A) of the Internal Revenue Code of 1986  
3           is amended—

4                   (A) in clause (i), by striking “, and” and  
5           inserting a comma;

6                   (B) by redesignating clause (ii) as clause  
7           (iii); and

8                   (C) by inserting after clause (i) the fol-  
9           lowing:

10                   “(ii) if the participant elects a waiver  
11           under clause (i), may elect the qualified op-  
12           tional survivor annuity at any time during the  
13           applicable election period, and”.

14           (2) DEFINITION.—Section 417 of such Code is  
15           amended by adding at the end the following:

16           “(g) DEFINITION OF QUALIFIED OPTIONAL SUR-  
17           VIVOR ANNUITY.—

18                   “(1) IN GENERAL.—For purposes of this sec-  
19           tion, the term ‘qualified optional survivor annuity’  
20           means an annuity—

21                   “(A) for the life of the participant with a  
22           survivor annuity for the life of the spouse which  
23           is equal to the applicable percentage of the  
24           amount of the annuity which is payable during

1 the joint lives of the participant and the spouse,  
2 and

3 “(B) which is the actuarial equivalent of a  
4 single annuity for the life of the participant.

5 Such term also includes any annuity in a form hav-  
6 ing the effect of an annuity described in the pre-  
7 ceding sentence.

8 “(2) APPLICABLE PERCENTAGE.—

9 “(A) IN GENERAL.—For purposes of para-  
10 graph (1), if the survivor annuity percentage—

11 “(i) is less than 75 percent, the appli-  
12 cable percentage is 75 percent, and

13 “(ii) is greater than or equal to 75  
14 percent, the applicable percentage is 50  
15 percent.

16 “(B) SURVIVOR ANNUITY PERCENTAGE.—

17 For purposes of subparagraph (A), the term  
18 ‘survivor annuity percentage’ means the per-  
19 centage which the survivor annuity under the  
20 plan’s qualified joint and survivor annuity bears  
21 to the annuity payable during the joint lives of  
22 the participant and the spouse.”

23 (3) NOTICE.—Section 417(a)(3)(A)(i) of such  
24 Code is amended by inserting “and of the qualified  
25 optional survivor annuity” after “annuity”.

1 (b) AMENDMENTS TO ERISA.—

2 (1) ELECTION OF SURVIVOR ANNUITY.—Section  
3 205(c)(1)(A) of the Employee Retirement Income  
4 Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is  
5 amended—

6 (A) in clause (i), by striking “, and” and  
7 inserting a comma;

8 (B) by redesignating clause (ii) as clause  
9 (iii); and

10 (C) by inserting after clause (i) the fol-  
11 lowing:

12 “(ii) if the participant elects a waiver  
13 under clause (i), may elect the qualified op-  
14 tional survivor annuity at any time during the  
15 applicable election period, and”.

16 (2) DEFINITION.—Section 205(d) of such Act  
17 (29 U.S.C. 1055(d)) is amended—

18 (A) by inserting “(1)” after “(d)”;

19 (B) by redesignating paragraphs (1) and  
20 (2) as subparagraphs (A) and (B), respectively;  
21 and

22 (C) by adding at the end the following:

23 “(2)(A) For purposes of this section, the term ‘quali-  
24 fied optional survivor annuity’ means an annuity—

1           “(i) for the life of the participant with a sur-  
2           vivor annuity for the life of the spouse which is  
3           equal to the applicable percentage of the amount of  
4           the annuity which is payable during the joint lives  
5           of the participant and the spouse, and

6           “(ii) which is the actuarial equivalent of a sin-  
7           gle annuity for the life of the participant.

8           Such term also includes any annuity in a form having the  
9           effect of an annuity described in the preceding sentence.

10          “(B)(i) For purposes of subparagraph (A), if the sur-  
11          vivor annuity percentage—

12               “(I) is less than 75 percent, the applicable per-  
13               centage is 75 percent, and

14               “(II) is greater than or equal to 75 percent, the  
15               applicable percentage is 50 percent.

16          “(ii) For purposes of clause (i), the term ‘survivor  
17          annuity percentage’ means the percentage which the sur-  
18          vivor annuity under the plan’s qualified joint and survivor  
19          annuity bears to the annuity payable during the joint lives  
20          of the participant and the spouse.”

21               (3) NOTICE.—Section 205(c)(3)(A)(i) of such  
22          Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-  
23          serting “and of the qualified optional survivor annu-  
24          ity” after “annuity”.

25          (c) EFFECTIVE DATES.—

1           (1) IN GENERAL.—The amendments made by  
2 this section shall apply to plan years beginning after  
3 December 31, 2005.

4           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
5 GAINED PLANS.—In the case of a plan maintained  
6 pursuant to 1 or more collective bargaining agree-  
7 ments between employee representatives and 1 or  
8 more employers ratified on or before the date of the  
9 enactment of this Act, the amendments made by this  
10 section shall apply to the first plan year beginning  
11 on or after the earlier of—

12                   (A) the later of—

13                           (i) January 1, 2006, or

14                           (ii) the date on which the last of such  
15 collective bargaining agreements termi-  
16 nates (determined without regard to any  
17 extension thereof after the date of enact-  
18 ment of this Act), or

19                   (B) January 1, 2007.

1 **TITLE VIII—IMPROVEMENTS IN**  
 2 **PORTABILITY AND DISTRIBUTION**  
 3 **RULES**

4 **SEC. 801. CLARIFICATIONS REGARDING PURCHASE OF PER-**  
 5 **MISSIVE SERVICE CREDIT.**

6 (a) IN GENERAL.—Section 415(n) of the Internal  
 7 Revenue Code of 1986 (relating to special rules for the  
 8 purchase of permissive service credit) is amended—

9 (1) by striking “an employee” in paragraph (1)  
 10 and inserting “a participant”, and

11 (2) by adding at the end of paragraph (3)(A)  
 12 the following new flush sentence:

13 “Such term may include service credit for peri-  
 14 ods for which there is no performance of serv-  
 15 ice, and notwithstanding clause (ii), may in-  
 16 clude service credited in order to provide an in-  
 17 creased benefit for service credit which a partic-  
 18 ipant is receiving under the plan.”

19 (b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE  
 20 TRANSFERS.—Section 415(n)(3) of such Code is amended  
 21 by adding at the end the following new subparagraph:

22 “(D) SPECIAL RULES FOR TRUSTEE-TO-  
 23 TRUSTEE TRANSFERS.—In the case of a trust-  
 24 ee-to-trustee transfer to which section  
 25 403(b)(13)(A) or 457(e)(17)(A) applies (with-

1 out regard to whether the transfer is made be-  
2 tween plans maintained by the same em-  
3 ployer)—

4 “(i) the limitations of subparagraph  
5 (B) shall not apply in determining whether  
6 the transfer is for the purchase of permis-  
7 sive service credit, and

8 “(ii) the distribution rules applicable  
9 under this title to the defined benefit gov-  
10 ernmental plan to which any amounts are  
11 so transferred shall apply to such amounts  
12 and any benefits attributable to such  
13 amounts.”

14 (c) NONQUALIFIED SERVICE.—Section 415(n)(3) of  
15 such Code is amended—

16 (1) by striking “permissive service credit attrib-  
17 utable to nonqualified service” each place it appears  
18 in subparagraph (B) and inserting “nonqualified  
19 service credit”,

20 (2) by striking so much of subparagraph (C) as  
21 precedes clause (i) and inserting:

22 “(C) NONQUALIFIED SERVICE CREDIT.—  
23 For purposes of subparagraph (B), the term  
24 ‘nonqualified service credit’ means permissive

1 service credit other than that allowed with re-  
2 spect to—”, and

3 (3) by striking “elementary or secondary edu-  
4 cation (through grade 12), as determined under  
5 State law” and inserting “elementary or secondary  
6 education (through grade 12), or a comparable level  
7 of education, as determined under the applicable law  
8 of the jurisdiction in which the service was per-  
9 formed”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—The amendments made by  
12 subsections (a) and (c) shall take effect as if in-  
13 cluded in the amendments made by section 1526 of  
14 the Taxpayer Relief Act of 1997.

15 (2) SUBSECTION (b).—The amendments made  
16 by subsection (b) shall take effect as if included in  
17 the amendments made by section 647 of the Eco-  
18 nomic Growth and Tax Relief Reconciliation Act of  
19 2001.

20 **SEC. 802. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**  
21 **ANNUITY CONTRACTS.**

22 (a) IN GENERAL.—Subparagraph (A) of section  
23 402(c)(2) (relating to the maximum amount which may  
24 be rolled over) is amended—



1 to certain distributions) is amended by adding at the end  
 2 the following new paragraph:

3 “(10) DISTRIBUTIONS TO QUALIFIED PUBLIC  
 4 SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

5 “(A) IN GENERAL.—In the case of a dis-  
 6 tribution to a qualified public safety employee  
 7 from a governmental plan (within the meaning  
 8 of section 414(d)) which is a defined benefit  
 9 plan, paragraph (2)(A)(v) shall be applied by  
 10 substituting ‘age 50’ for ‘age 55’.

11 “(B) QUALIFIED PUBLIC SAFETY EM-  
 12 PLOYEE.—For purposes of this paragraph, the  
 13 term ‘qualified public safety employee’ means  
 14 any employee of a State or political subdivision  
 15 of a State who provides police protection, fire-  
 16 fighting services, or emergency medical services  
 17 for any area within the jurisdiction of such  
 18 State or political subdivision.”

19 (b) EFFECTIVE DATE.—The amendment made by  
 20 this section shall apply to distributions after the date of  
 21 the enactment of this Act.

22 **SEC. 805. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
 23 **FICIARIES OF CERTAIN RETIREMENT PLAN**  
 24 **DISTRIBUTIONS.**

25 (a) IN GENERAL.—

1           (1) QUALIFIED PLANS.—Section 402(c) of the  
2 Internal Revenue Code of 1986 (relating to rollovers  
3 from exempt trusts) is amended by adding at the  
4 end the following new paragraph:

5           “(11) DISTRIBUTIONS TO INHERITED INDI-  
6 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-  
7 FICIARY.—

8           “(A) IN GENERAL.—If, with respect to any  
9 portion of a distribution from an eligible retire-  
10 ment plan of a deceased employee, a direct  
11 trustee-to-trustee transfer is made to an indi-  
12 vidual retirement plan described in clause (i) or  
13 (ii) of paragraph (8)(B) established for the pur-  
14 poses of receiving the distribution on behalf of  
15 an individual who is a designated beneficiary  
16 (as defined by section 401(a)(9)(E)) of the em-  
17 ployee and who is not the surviving spouse of  
18 the employee—

19           “(i) the transfer shall be treated as an  
20 eligible rollover distribution for purposes of  
21 this subsection,

22           “(ii) the individual retirement plan  
23 shall be treated as an inherited individual  
24 retirement account or individual retirement  
25 annuity (within the meaning of section

1           408(d)(3)(C)) for purposes of this title,  
2           and

3           “(iii) section 401(a)(9)(B) (other than  
4           clause (iv) thereof) shall apply to such  
5           plan.

6           “(B) CERTAIN TRUSTS TREATED AS BENE-  
7           FICIARIES.—For purposes of this paragraph, to  
8           the extent provided in rules prescribed by the  
9           Secretary, a trust maintained for the benefit of  
10          one or more designated beneficiaries shall be  
11          treated in the same manner as a designated  
12          beneficiary.”

13          (2) SECTION 403(a) PLANS.—Subparagraph  
14          (B) of section 403(a)(4) of such Code (relating to  
15          rollover amounts) is amended by striking “and (9)”  
16          and inserting “, (9), and (11)”.

17          (3) SECTION 403(b) PLANS.—Subparagraph  
18          (B) of section 403(b)(8) of such Code (relating to  
19          rollover amounts) is amended by striking “and (9)”  
20          and inserting “, (9), and (11)”.

21          (4) SECTION 457 PLANS.—Subparagraph (B) of  
22          section 457(e)(16) of such Code (relating to rollover  
23          amounts) is amended by striking “and (9)” and in-  
24          serting “, (9), and (11)”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to distributions after December 31,  
3 2005.

4 **SEC. 806. FASTER VESTING OF EMPLOYER NONELECTIVE**  
5 **CONTRIBUTIONS.**

6 (a) AMENDMENTS TO THE INTERNAL REVENUE  
7 CODE OF 1986.—

8 (1) IN GENERAL.—Paragraph (2) of section  
9 411(a) of the Internal Revenue Code of 1986 (relat-  
10 ing to employer contributions) is amended to read as  
11 follows:

12 “(2) EMPLOYER CONTRIBUTIONS.—

13 “(A) DEFINED BENEFIT PLANS.—

14 “(i) IN GENERAL.—In the case of a  
15 defined benefit plan, a plan satisfies the  
16 requirements of this paragraph if it satis-  
17 fies the requirements of clause (ii) or (iii).

18 “(ii) 5-YEAR VESTING.—A plan satis-  
19 fies the requirements of this clause if an  
20 employee who has completed at least 5  
21 years of service has a nonforfeitable right  
22 to 100 percent of the employee’s accrued  
23 benefit derived from employer contribu-  
24 tions.

1                   “(iii) 3 TO 7 YEAR VESTING.—A plan  
 2                   satisfies the requirements of this clause if  
 3                   an employee has a nonforfeitable right to  
 4                   a percentage of the employee’s accrued  
 5                   benefit derived from employer contribu-  
 6                   tions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

7                   “(B) DEFINED CONTRIBUTION PLANS.—

8                   “(i) IN GENERAL.—In the case of a  
 9                   defined contribution plan, a plan satisfies  
 10                  the requirements of this paragraph if it  
 11                  satisfies the requirements of clause (ii) or  
 12                  (iii).

13                  “(ii) 3-YEAR VESTING.—A plan satis-  
 14                  fies the requirements of this clause if an  
 15                  employee who has completed at least 3  
 16                  years of service has a nonforfeitable right  
 17                  to 100 percent of the employee’s accrued  
 18                  benefit derived from employer contribu-  
 19                  tions.

20                  “(iii) 2 TO 6 YEAR VESTING.—A plan  
 21                  satisfies the requirements of this clause if  
 22                  an employee has a nonforfeitable right to

1 a percentage of the employee’s accrued  
 2 benefit derived from employer contribu-  
 3 tions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

4 (2) CONFORMING AMENDMENT.—Section  
 5 411(a) of such Code (relating to general rule for  
 6 minimum vesting standards) is amended by striking  
 7 paragraph (12).

8 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
 9 INCOME SECURITY ACT OF 1974.—

10 (1) IN GENERAL.—Paragraph (2) of section  
 11 203(a) of the Employee Retirement Income Security  
 12 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to  
 13 read as follows:

14 “(2)(A)(i) In the case of a defined benefit plan,  
 15 a plan satisfies the requirements of this paragraph  
 16 if it satisfies the requirements of clause (ii) or (iii).

17 “(ii) A plan satisfies the requirements of this  
 18 clause if an employee who has completed at least 5  
 19 years of service has a nonforfeitable right to 100  
 20 percent of the employee’s accrued benefit derived  
 21 from employer contributions.

1           “(iii) A plan satisfies the requirements of this  
2 clause if an employee has a nonforfeitable right to  
3 a percentage of the employee’s accrued benefit de-  
4 rived from employer contributions determined under  
5 the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

6           “(B)(i) In the case of an individual account  
7 plan, a plan satisfies the requirements of this para-  
8 graph if it satisfies the requirements of clause (ii) or  
9 (iii).

10           “(ii) A plan satisfies the requirements of this  
11 clause if an employee who has completed at least 3  
12 years of service has a nonforfeitable right to 100  
13 percent of the employee’s accrued benefit derived  
14 from employer contributions.

15           “(iii) A plan satisfies the requirements of this  
16 clause if an employee has a nonforfeitable right to  
17 a percentage of the employee’s accrued benefit de-  
18 rived from employer contributions determined under  
19 the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60

5 .....	80
6 or more .....	100.”.

1           (2) CONFORMING AMENDMENT.—Section  
2 203(a) of such Act is amended by striking para-  
3 graph (4).

4           (c) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in para-  
6 graph (2), the amendments made by this section  
7 shall apply to contributions for plan years beginning  
8 after December 31, 2005.

9           (2) COLLECTIVE BARGAINING AGREEMENTS.—

10 In the case of a plan maintained pursuant to one or  
11 more collective bargaining agreements between em-  
12 ployee representatives and one or more employers  
13 ratified before the date of the enactment of this Act,  
14 the amendments made by this section shall not apply  
15 to contributions on behalf of employees covered by  
16 any such agreement for plan years beginning before  
17 the earlier of—

18                   (A) the later of—

19                           (i) the date on which the last of such  
20 collective bargaining agreements termi-  
21 nates (determined without regard to any  
22 extension thereof on or after such date of  
23 the enactment); or

24                           (ii) January 1, 2006; or

1 (B) January 1, 2008.

2 (3) SERVICE REQUIRED.—With respect to any  
3 plan, the amendments made by this section shall not  
4 apply to any employee before the date that such em-  
5 ployee has 1 hour of service under such plan in any  
6 plan year to which the amendments made by this  
7 section apply.

8 **SEC. 807. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
9 **PLANS TO ROTH IRAS.**

10 (a) IN GENERAL.—Subsection (e) of section 408A of  
11 the Internal Revenue Code of 1986 (defining qualified roll-  
12 over contribution) is amended to read as follows:

13 “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For  
14 purposes of this section, the term ‘qualified rollover con-  
15 tribution’ means a rollover contribution—

16 “(1) to a Roth IRA from another such account,

17 “(2) from an eligible retirement plan, but only  
18 if—

19 “(A) in the case of an individual retire-  
20 ment plan, such rollover contribution meets the  
21 requirements of section 408(d)(3), and

22 “(B) in the case of any eligible retirement  
23 plan (as defined in section 402(c)(8)(B) other  
24 than clauses (i) and (ii) thereof), such rollover

1 contribution meets the requirements of section  
2 402(c), 403(b)(8), or 457(e)(16), as applicable.  
3 For purposes of section 408(d)(3)(B), there shall be dis-  
4 regarded any qualified rollover contribution from an indi-  
5 vidual retirement plan (other than a Roth IRA) to a Roth  
6 IRA.”

7 (b) CONFORMING AMENDMENTS.—

8 (1) Section 408A(c)(3)(B) of such Code is  
9 amended—

10 (A) in the text by striking “individual re-  
11 tirement plan” and inserting “an eligible retire-  
12 ment plan (as defined by section  
13 402(c)(8)(B))”, and

14 (B) in the heading by striking “IRA” and  
15 inserting “ELIGIBLE RETIREMENT PLAN”.

16 (2) Section 408A(d)(3) of such Code is amend-  
17 ed—

18 (A) in subparagraph (A), by striking “sec-  
19 tion 408(d)(3)” inserting “sections 402(c),  
20 403(b)(8), 408(d)(3), and 457(e)(16)”,

21 (B) in subparagraph (B), by striking “in-  
22 dividual retirement plan” and inserting “eligible  
23 retirement plan (as defined by section  
24 402(c)(8)(B))”,

1 (C) in subparagraph (D), by inserting “or  
2 6047” after “408(i)”,

3 (D) in subparagraph (D), by striking “or  
4 both” and inserting “persons subject to section  
5 6047(d)(1), or all of the foregoing persons”,  
6 and

7 (E) in the heading, by striking “IRA” and  
8 inserting “ELIGIBLE RETIREMENT PLAN”.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to distributions after December 31,  
11 2005.

12 **SEC. 808. ELIMINATION OF HIGHER PENALTY ON CERTAIN**  
13 **SIMPLE PLAN DISTRIBUTIONS.**

14 (a) IN GENERAL.—Subsection (t) of section 72 of the  
15 Internal Revenue Code of 1986 (relating to 10-percent ad-  
16 ditional tax on early distributions from qualified retire-  
17 ment plans), as amended by section 804, is amended by  
18 striking paragraph (6) and redesignating paragraphs (7),  
19 (8), (9), and (10) as paragraphs (6), (7), (8), and (9),  
20 respectively.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 72(t)(2)(E) of such Code is amend-  
23 ed by striking “paragraph (7)” and inserting “para-  
24 graph (6)”.

1           (2) Section 72(t)(2)(F) of such Code is amend-  
2           ed by striking “paragraph (8)” and inserting “para-  
3           graph (7)”.

4           (3) Section 408(d)(3)(G) of such Code is  
5           amended by striking “applies” and inserting “ap-  
6           plied on the day before the date of the enactment of  
7           the National Employee Savings and Trust Equity  
8           Guarantee Act of 2005”.

9           (4) Section 457(a)(2) of such Code is amended  
10          by striking “section 72(t)(9)” and inserting “section  
11          72(t)(8)”.

12          (c) EFFECTIVE DATE.—The amendments made by  
13          this section shall apply to years beginning after December  
14          31, 2005.

15          **SEC. 809. SIMPLE PLAN PORTABILITY.**

16          (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-  
17          tion 408(d) of the Internal Revenue Code of 1986 (relat-  
18          ing to rollover contributions), as amended by this Act, is  
19          amended by striking subparagraph (G) and redesignating  
20          subparagraphs (H) and (I) as subparagraphs (G) and (H),  
21          respectively.

22          (b) EFFECTIVE DATE.—The amendment made by  
23          this section shall apply to years beginning after December  
24          31, 2005.

1 **SEC. 810. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
 2 **MENT PLANS.**

3 An individual shall not be precluded from partici-  
 4 pating in an eligible deferred compensation plan by reason  
 5 of having received a distribution under section 457(e)(9)  
 6 of the Internal Revenue Code of 1986, as in effect prior  
 7 to the enactment of the Small Business Job Protection  
 8 Act of 1996.

9 **SEC. 811. TRANSFERS TO THE PBGC.**

10 (a) **MANDATORY DISTRIBUTIONS TO PBGC.**—Clause  
 11 (i) of section 401(a)(31)(B) of the Internal Revenue Code  
 12 of 1986 (relating to general rule for certain mandatory  
 13 distributions) is amended by inserting “to the Pension  
 14 Benefit Guaranty Corporation in accordance with section  
 15 4050(e) of the Employee Retirement Income Security Act  
 16 of 1974 or” after “such transfer”.

17 (b) **TAX TREATMENT OF DISTRIBUTIONS.**—Subpara-  
 18 graph (B) of section 401(a)(31) of such Code is amended  
 19 by adding at the end the following new clause:

20 “(iii) **INCOME TAX TREATMENT OF**  
 21 **TRANSFERS TO PBGC.**—For purposes of  
 22 determining the income tax treatment re-  
 23 lating to transfers to the Pension Benefit  
 24 Guaranty Corporation under clause (i)—

25 “(I) the transfer of amounts to  
 26 the Pension Benefit Guaranty Cor-

1                   poration pursuant to clause (i) shall  
2                   be treated as a transfer to an indi-  
3                   vidual retirement plan under such  
4                   clause, and

5                   “**(II)** the distribution of such  
6                   amounts from the Pension Benefit  
7                   Guaranty Corporation shall be treated  
8                   as a distribution from an individual  
9                   retirement plan.”

10           **(c) MISSING PARTICIPANTS AND BENEFICIARIES.—**

11 Section 4050 of the Employee Retirement Income Security  
12 Act of 1974 (29 U.S.C. 1350), as amended by section 812,  
13 is amended by redesignating subsection (e) as subsection  
14 (g) and by inserting after subsection (d) the following new  
15 subsections:

16           “**(e) INVOLUNTARY CASHOUTS.—**

17                   “**(1) PAYMENT BY THE CORPORATION.—**If ben-  
18                   efits under a plan described in paragraph (3) were  
19                   transferred to the corporation under section  
20                   401(a)(31)(B) of the Internal Revenue Code of  
21                   1986, the corporation shall, upon application filed by  
22                   the participant or beneficiary with the corporation in  
23                   such form and manner as may be prescribed in regu-  
24                   lations of the corporation, pay to the participant or

1 beneficiary the amount transferred (or the appro-  
2 priate survivor benefit) either—

3 “(A) in a single sum (plus interest), or

4 “(B) in such other form as is specified in  
5 regulations of the corporation.

6 “(2) INFORMATION TO THE CORPORATION.—To  
7 the extent provided in regulations, the plan adminis-  
8 trator of a plan described in paragraph (3) shall,  
9 upon a transfer of benefits to the corporation under  
10 section 401(a)(31)(B) of such Code, provide the cor-  
11 poration information with respect to benefits of the  
12 participant or beneficiary so transferred.

13 “(3) PLANS DESCRIBED.—A plan is described  
14 in this paragraph if the plan is a pension plan (with-  
15 in the meaning of section 3(2))—

16 “(A) which provides for mandatory dis-  
17 tributions under section 401(a)(31)(B) of the  
18 Internal Revenue Code of 1986, and

19 “(B) which is not a plan described in para-  
20 graphs (2) through (11) of section 4021(b).

21 “(4) CERTAIN PROVISIONS NOT TO APPLY.—  
22 Subsections (a)(1) and (a)(3) shall not apply to a  
23 plan described in paragraph (3).

24 “(f) AUTHORITY TO CHARGE FEE.—The corporation  
25 may charge a reasonable fee for costs incurred in connec-

1 tion with the transfer and management of amounts trans-  
2 ferred to the corporation under this section. Such fee may  
3 be imposed on the transferor and may be deducted from  
4 amounts so transferred.”

5 (d) EFFECTIVE DATES.—

6 (1) INTERNAL REVENUE CODE PROVISIONS.—

7 The amendments made by subsections (a) and (b)  
8 shall take effect as if included in the amendments  
9 made by section 657 of the Economic Growth and  
10 Tax Relief Reconciliation Act of 2001.

11 (2) EMPLOYEE RETIREMENT INCOME SECURITY

12 ACT OF 1974 PROVISIONS.—The amendments made  
13 by subsection (c) shall apply to distributions made  
14 after final regulations implementing subsections (e)  
15 and (f) of section 4050 of the Employee Retirement  
16 Income Security Act of 1974 (as added by sub-  
17 section (c)) are prescribed.

18 (3) REGULATIONS.—The Pension Benefit Guar-

19 anty Corporation shall issue regulations necessary to  
20 carry out the amendments made by subsection (c)  
21 not later than December 31, 2006.

22 **SEC. 812. MISSING PARTICIPANTS.**

23 (a) IN GENERAL.—Section 4050 of the Employee Re-  
24 tirement Income Security Act of 1974 (29 U.S.C. 1350)  
25 is amended by redesignating subsection (c) as subsection

1 (e) and by inserting after subsection (b) the following new  
2 subsections:

3 “(c) **MULTIEMPLOYER PLANS.**—The corporation  
4 shall prescribe rules similar to the rules in subsection (a)  
5 for multiemployer plans covered by this title that termi-  
6 nate under section 4041A.

7 “(d) **PLANS NOT OTHERWISE SUBJECT TO TITLE.**—

8 “(1) **TRANSFER TO CORPORATION.**—The plan  
9 administrator of a plan described in paragraph (4)  
10 may elect to transfer a missing participant’s benefits  
11 to the corporation upon termination of the plan.

12 “(2) **INFORMATION TO THE CORPORATION.**—To  
13 the extent provided in regulations, the plan adminis-  
14 trator of a plan described in paragraph (4) shall,  
15 upon termination of the plan, provide the corpora-  
16 tion information with respect to benefits of a miss-  
17 ing participant if the plan transfers such benefits—

18 “(A) to the corporation, or

19 “(B) to an entity other than the corpora-  
20 tion or a plan described in paragraph (4)(B)(ii).

21 “(3) **PAYMENT BY THE CORPORATION.**—If ben-  
22 efits of a missing participant were transferred to the  
23 corporation under paragraph (1), the corporation  
24 shall, upon location of the participant or beneficiary,  
25 pay to the participant or beneficiary the amount

1 transferred (or the appropriate survivor benefit) ei-  
2 ther—

3 “(A) in a single sum (plus interest), or

4 “(B) in such other form as is specified in  
5 regulations of the corporation.

6 “(4) PLANS DESCRIBED.—A plan is described  
7 in this paragraph if—

8 “(A) the plan is a pension plan (within the  
9 meaning of section 3(2))—

10 “(i) to which the provisions of this  
11 section do not apply (without regard to  
12 this subsection), and

13 “(ii) which is not a plan described in  
14 paragraphs (2) through (11) of section  
15 4021(b), and

16 “(B) at the time the assets are to be dis-  
17 tributed upon termination, the plan—

18 “(i) has missing participants, and

19 “(ii) has not provided for the transfer  
20 of assets to pay the benefits of all missing  
21 participants to another pension plan (with-  
22 in the meaning of section 3(2)).

23 “(5) CERTAIN PROVISIONS NOT TO APPLY.—  
24 Subsections (a)(1) and (a)(3) shall not apply to a  
25 plan described in paragraph (4).”

1 (b) CONFORMING AMENDMENTS.—Section 206(f) of  
2 such Act (29 U.S.C. 1056(f)) is amended—

3 (1) by striking “title IV” and inserting “section  
4 4050”; and

5 (2) by striking “the plan shall provide that,”.

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to distributions made after final  
8 regulations implementing subsections (c) and (d) of sec-  
9 tion 4050 of the Employee Retirement Income Security  
10 Act of 1974 (as added by subsection (a)), respectively, are  
11 prescribed.

## 12 **TITLE IX—ADMINISTRATIVE** 13 **PROVISIONS**

### 14 **SEC. 901. EMPLOYEE PLANS COMPLIANCE RESOLUTION** 15 **SYSTEM.**

16 (a) IN GENERAL.—The Secretary of the Treasury  
17 shall have full authority to establish and implement the  
18 Employee Plans Compliance Resolution System (or any  
19 successor program) and any other employee plans correc-  
20 tion policies, including the authority to waive income, ex-  
21 cise, or other taxes to ensure that any tax, penalty, or  
22 sanction is not excessive and bears a reasonable relation-  
23 ship to the nature, extent, and severity of the failure.

24 (b) IMPROVEMENTS.—The Secretary of the Treasury  
25 shall continue to update and improve the Employee Plans

1 Compliance Resolution System (or any successor pro-  
2 gram), giving special attention to—

3 (1) increasing the awareness and knowledge of  
4 small employers concerning the availability and use  
5 of the program;

6 (2) taking into account special concerns and  
7 circumstances that small employers face with respect  
8 to compliance and correction of compliance failures;

9 (3) extending the duration of the self-correction  
10 period under the Self-Correction Program for signifi-  
11 cant compliance failures;

12 (4) expanding the availability to correct insig-  
13 nificant compliance failures under the Self-Correc-  
14 tion Program during audit; and

15 (5) assuring that any tax, penalty, or sanction  
16 that is imposed by reason of a compliance failure is  
17 not excessive and bears a reasonable relationship to  
18 the nature, extent, and severity of the failure.

19 **SEC. 902. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
20 **MORATORIUM ON APPLICATION OF CERTAIN**  
21 **NONDISCRIMINATION RULES APPLICABLE TO**  
22 **STATE AND LOCAL PLANS.**

23 (a) IN GENERAL.—The following provisions are each  
24 amended by striking “maintained by a State or local gov-

1 ernment or political subdivision thereof (or agency or in-  
2 strumentality thereof)”:

3 (1) Section 401(a)(5)(G) of the Internal Rev-  
4 enue Code of 1986.

5 (2) Section 401(a)(26)(H) of such Code.

6 (3) Section 401(k)(3)(G) of such Code.

7 (4) Section 1505(d)(2) of the Taxpayer Relief  
8 Act of 1997.

9 (b) CONFORMING AMENDMENTS.—

10 (1) The heading for section 401(a)(5)(G) of  
11 such Code is amended to read as follows: “GOVERN-  
12 MENTAL PLANS.—”.

13 (2) The heading for section 401(a)(26)(H) of  
14 such Code is amended to read as follows: “EXCEP-  
15 TION FOR GOVERNMENTAL PLANS.—”.

16 (3) Section 401(k)(3)(G) of such Code is  
17 amended by inserting “GOVERNMENTAL PLANS.—”  
18 after “(G)”.

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

22 **SEC. 903. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
23 **TRIBUTIONS.**

24 (a) EXPANSION OF PERIOD.—

1           (1) AMENDMENT OF INTERNAL REVENUE  
2 CODE.—

3           (A) IN GENERAL.—Section 417(a)(6)(A) of  
4 the Internal Revenue Code of 1986 is amended  
5 by striking “90-day” and inserting “180-day”.

6           (B) MODIFICATION OF REGULATIONS.—  
7 The Secretary of the Treasury shall modify the  
8 regulations under sections 402(f), 411(a)(11),  
9 and 417 of the Internal Revenue Code of 1986  
10 by substituting “180 days” for “90 days” each  
11 place it appears in Treasury Regulations sec-  
12 tions 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-  
13 1(b).

14           (2) AMENDMENT OF ERISA.—

15           (A) IN GENERAL.—Section 205(c)(7)(A) of  
16 the Employee Retirement Income Security Act  
17 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended  
18 by striking “90-day” and inserting “180-day”.

19           (B) MODIFICATION OF REGULATIONS.—  
20 The Secretary of the Treasury shall modify the  
21 regulations under part 2 of subtitle B of title  
22 I of the Employee Retirement Income Security  
23 Act of 1974 relating to sections 203(e) and 205  
24 of such Act by substituting “180 days” for “90  
25 days” each place it appears.

1           (3) EFFECTIVE DATE.—The amendments and  
2           modifications made or required by this subsection  
3           shall apply to years beginning after December 31,  
4           2005.

5           (b) NOTIFICATION OF RIGHT TO DEFER.—

6           (1) IN GENERAL.—The Secretary of the Treas-  
7           ury shall modify the regulations under section  
8           411(a)(11) of the Internal Revenue Code of 1986  
9           and under section 205 of the Employee Retirement  
10          Income Security Act of 1974 to provide that the de-  
11          scription of a participant’s right, if any, to defer re-  
12          ceipt of a distribution shall also describe the con-  
13          sequences of failing to defer such receipt.

14          (2) EFFECTIVE DATE.—

15           (A) IN GENERAL.—The modifications re-  
16           quired by paragraph (1) shall apply to years be-  
17           ginning after December 31, 2005.

18           (B) REASONABLE NOTICE.—A plan shall  
19           not be treated as failing to meet the require-  
20           ments of section 411(a)(11) of such Code or  
21           section 205 of such Act with respect to any de-  
22           scription of consequences described in para-  
23           graph (1) made within 90 days after the Sec-  
24           retary of the Treasury issues the modifications  
25           required by paragraph (1) if the plan adminis-

1           trator makes a reasonable attempt to comply  
2           with such requirements.

3 **SEC. 904. REPORTING SIMPLIFICATION.**

4           (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
5 OWNERS AND THEIR SPOUSES.—

6           (1) IN GENERAL.—The Secretary of the Treas-  
7           ury and the Secretary of Labor shall modify the re-  
8           quirements for filing annual returns with respect to  
9           one-participant retirement plans to ensure that such  
10          plans with assets of \$250,000 or less as of the close  
11          of the plan year need not file a return for that year.

12          (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
13          FINED.—For purposes of this subsection, the term  
14          “one-participant retirement plan” means a retire-  
15          ment plan with respect to which the following re-  
16          quirements are met:

17                (A) on the first day of the plan year—

18                   (i) the plan covered only one indi-  
19                   vidual (or the individual and the individ-  
20                   ual’s spouse) and the individual owned 100  
21                   percent of the plan sponsor (whether or  
22                   not incorporated), or

23                   (ii) the plan covered only one or more  
24                   partners (or partners and their spouses) in  
25                   the plan sponsor;

1 (B) the plan meets the minimum coverage  
2 requirements of section 410(b) of the Internal  
3 Revenue Code of 1986 without being combined  
4 with any other plan of the business that covers  
5 the employees of the business;

6 (C) the plan does not provide benefits to  
7 anyone except the individual (and the individ-  
8 ual's spouse) or the partners (and their  
9 spouses);

10 (D) the plan does not cover a business that  
11 is a member of an affiliated service group, a  
12 controlled group of corporations, or a group of  
13 businesses under common control; and

14 (E) the plan does not cover a business that  
15 uses the services of leased employees (within  
16 the meaning of section 414(n) of such Code).

17 For purposes of this paragraph, the term "partner"  
18 includes a 2-percent shareholder (as defined in sec-  
19 tion 1372(b) of such Code) of an S corporation.

20 (3) OTHER DEFINITIONS.—Terms used in para-  
21 graph (2) which are also used in section 414 of the  
22 Internal Revenue Code of 1986 shall have the re-  
23 spective meanings given such terms by such section.

1           (4) EFFECTIVE DATE.—The provisions of this  
2           subsection shall apply to plan years beginning on or  
3           after January 1, 2006.

4           (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
5 PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the  
6 case of plan years beginning after December 31, 2006, the  
7 Secretary of the Treasury, in consultation with the Sec-  
8 retary of Labor, shall provide for the filing of a simplified  
9 annual return for any retirement plan which covers less  
10 than 25 participants on the first day of a plan year and  
11 which meets the requirements described in subparagraphs  
12 (B), (D), and (E) of subsection (a)(2).

13 **SEC. 905. VOLUNTARY EARLY RETIREMENT INCENTIVE AND**  
14                           **EMPLOYMENT RETENTION PLANS MAIN-**  
15                           **TAINED BY LOCAL EDUCATIONAL AGENCIES**  
16                           **AND OTHER ENTITIES.**

17           (a) VOLUNTARY EARLY RETIREMENT INCENTIVE  
18 PLANS.—

19           (1) TREATMENT AS PLAN PROVIDING SEVER-  
20 ANCE PAY.—Section 457(e)(11) of the Internal Rev-  
21 enue Code of 1986 (relating to certain plans ex-  
22 cluded) is amended by adding at the end the fol-  
23 lowing new subparagraph:

24                           “(D) CERTAIN VOLUNTARY EARLY RETIRE-  
25                           MENT INCENTIVE PLANS.—

1           “(i) IN GENERAL.—If an applicable  
2 voluntary early retirement incentive plan—

3           “(I) makes payments or supple-  
4 ments as an early retirement benefit,  
5 a retirement-type subsidy, or a benefit  
6 described in the last sentence of sec-  
7 tion 411(a)(9), and

8           “(II) such payments or supple-  
9 ments are made in coordination with  
10 a defined benefit plan which is de-  
11 scribed in section 401(a) and includes  
12 a trust exempt from tax under section  
13 501(a) and which is maintained by an  
14 eligible employer described in para-  
15 graph (1)(A) or by an education asso-  
16 ciation described in clause (ii)(II),

17 such applicable plan shall be treated for  
18 purposes of subparagraph (A)(i) as a bona  
19 fide severance pay plan with respect to  
20 such payments or supplements to the ex-  
21 tent such payments or supplements could  
22 otherwise have been provided under such  
23 defined benefit plan (determined as if sec-  
24 tion 411 applied to such defined benefit  
25 plan).

1           “(ii) APPLICABLE VOLUNTARY EARLY  
2           RETIREMENT INCENTIVE PLAN.—For pur-  
3           poses of this subparagraph, the term ‘ap-  
4           plicable voluntary early retirement incen-  
5           tive plan’ means a voluntary early retire-  
6           ment incentive plan maintained by—

7                   “(I) a local educational agency  
8                   (as defined in section 9101 of the Ele-  
9                   mentary and Secondary Education  
10                  Act of 1965 (20 U.S.C. 7801)), or

11                  “(II) an education association  
12                  which principally represents employees  
13                  of 1 or more agencies described in  
14                  subclause (I) and which is described  
15                  in section 501(c) (5) or (6) and ex-  
16                  empt from tax under section 501(a).”

17           (2) AGE DISCRIMINATION IN EMPLOYMENT  
18           ACT.—Section 4(l)(1) of the Age Discrimination in  
19           Employment Act of 1967 (29 U.S.C. 623(l)(1)) is  
20           amended—

21                   (A) by inserting “(A)” after “(1)”,

22                   (B) by redesignating subparagraphs (A)  
23                   and (B) as clauses (i) and (ii), respectively,

24                   (C) by redesignating clauses (i) and (ii) of  
25                   subparagraph (B) (as in effect before the

1 amendments made by subparagraph (B)) as  
2 subclauses (I) and (II), respectively, and

3 (D) by adding at the end the following:

4 “(B) A voluntary early retirement incentive  
5 plan that—

6 “(i) is maintained by—

7 “(I) a local educational agency (as de-  
8 fined in section 9101 of the Elementary  
9 and Secondary Education Act of 1965 (20  
10 U.S.C. 7801), or

11 “(II) an education association which  
12 principally represents employees of 1 or  
13 more agencies described in subclause (I)  
14 and which is described in section 501(c)  
15 (5) or (6) of the Internal Revenue Code of  
16 1986 and exempt from taxation under sec-  
17 tion 501(a) of such Code, and

18 “(ii) makes payments or supplements de-  
19 scribed in subclauses (I) and (II) of subpara-  
20 graph (A)(ii) in coordination with a defined  
21 benefit plan (as so defined) maintained by an  
22 eligible employer described in section  
23 457(e)(1)(A) of such Code or by an education  
24 association described in clause (i)(II),

1 shall be treated solely for purposes of subparagraph  
 2 (A)(ii) as if it were a part of the defined benefit plan  
 3 with respect to such payments or supplements. Pay-  
 4 ments or supplements under such a voluntary early  
 5 retirement incentive plan shall not constitute sever-  
 6 ance pay for purposes of section 4(l)(2) of the Age  
 7 Discrimination in Employment Act (29 U.S.C.  
 8 623(l)(2)).”

9 (b) EMPLOYMENT RETENTION PLANS.—

10 (1) IN GENERAL.—Section 457(f)(2) of the In-  
 11 ternal Revenue Code of 1986 (relating to exceptions)  
 12 is amended by striking “and” at the end of subpara-  
 13 graph (D), by striking the period at the end of sub-  
 14 paragraph (E) and inserting “, and”, and by adding  
 15 at the end the following:

16 “(F) that portion of any applicable employ-  
 17 ment retention plan described in paragraph (4)  
 18 with respect to any participant.”

19 (2) DEFINITIONS AND RULES RELATING TO EM-  
 20 PLOYMENT RETENTION PLANS.—Section 457(f) of  
 21 such Code is amended by adding at the end the fol-  
 22 lowing new paragraph:

23 “(4) EMPLOYMENT RETENTION PLANS.—For  
 24 purposes of paragraph (2)(F)—

1           “(A) IN GENERAL.—The portion of an ap-  
2           plicable employment retention plan described in  
3           this paragraph with respect to any participant  
4           is that portion of the plan which provides bene-  
5           fits payable to the participant not in excess of  
6           twice the applicable dollar limit determined  
7           under subsection (e)(15).

8           “(B) OTHER RULES.—

9           “(i) LIMITATION.—Paragraph (2)(F)  
10          shall only apply to the portion of the plan  
11          described in subparagraph (A) for years  
12          preceding the year in which such portion is  
13          paid or otherwise made available to the  
14          participant.

15          “(ii) TREATMENT.—A plan shall not  
16          be treated for purposes of this title as pro-  
17          viding for the deferral of compensation for  
18          any year with respect to the portion of the  
19          plan described in subparagraph (A).

20          “(C) APPLICABLE EMPLOYMENT RETEN-  
21          TION PLAN.—The term ‘applicable employment  
22          retention plan’ means an employment retention  
23          plan maintained by—

24                 “(i) a local educational agency (as de-  
25                 fined in section 9101 of the Elementary

1 and Secondary Education Act of 1965 (20  
2 U.S.C. 7801), or

3 “(ii) an education association which  
4 principally represents employees of 1 or  
5 more agencies described in clause (i) and  
6 which is described in section 501(c) (5) or  
7 (6) and exempt from taxation under sec-  
8 tion 501(a).

9 “(D) EMPLOYMENT RETENTION PLAN.—

10 The term ‘employment retention plan’ means a  
11 plan to pay, upon termination of employment,  
12 compensation to an employee of a local edu-  
13 cational agency or education association de-  
14 scribed in subparagraph (C) for purposes of—

15 “(i) retaining the services of the em-  
16 ployee, or

17 “(ii) rewarding such employee for the  
18 employee’s service with 1 or more such  
19 agencies or associations.”

20 (e) COORDINATION WITH ERISA.—Section 3(2)(B)  
21 of the Employee Retirement Income Security Act of 1974  
22 (29 U.S.C. 1002(2)(B)) is amended by adding at the end  
23 the following: “An applicable voluntary early retirement  
24 incentive plan (as defined in section 457(e)(11)(D)(ii) of  
25 the Internal Revenue Code of 1986) making payments or

1 supplements described in section 457(e)(11)(D)(i) of such  
2 Code, and an applicable employment retention plan (as de-  
3 fined in section 457(f)(4)(C) of such Code) making pay-  
4 ments of benefits described in section 457(f)(4)(A) of such  
5 Code, shall, for purposes of this title, be treated as a wel-  
6 fare plan (and not a pension plan) with respect to such  
7 payments and supplements.”

8 (d) EFFECTIVE DATES.—

9 (1) IN GENERAL.—The amendments made by  
10 this Act shall take effect on the date of the enact-  
11 ment of this Act.

12 (2) TAX AMENDMENTS.—The amendments  
13 made by subsections (a)(1) and (b) shall apply to  
14 taxable years ending after the date of the enactment  
15 of this Act.

16 (3) ERISA AMENDMENTS.—The amendment  
17 made by subsection (c) shall apply to plan years  
18 ending after the date of the enactment of this Act.

19 (4) CONSTRUCTION.—Nothing in the amend-  
20 ments made by this section shall alter or affect the  
21 construction of the Internal Revenue Code of 1986,  
22 the Employee Retirement Income Security Act of  
23 1974, or the Age Discrimination in Employment Act  
24 of 1967 as applied to any plan, arrangement, or con-  
25 duct to which such amendments do not apply.

1 **SEC. 906. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**  
2 **TION AS A RESULT OF PENSION ROLLOVERS.**

3 (a) IN GENERAL.—Section 3304(a) of the Internal  
4 Revenue Code of 1986 (relating to requirements for State  
5 unemployment laws) is amended by adding at the end the  
6 following new flush sentence:  
7 “Compensation shall not be reduced under paragraph (15)  
8 for any pension, retirement or retired pay, annuity, or  
9 similar payment which is not includible in gross income  
10 of the individual for the taxable year in which paid because  
11 it was part of a rollover distribution.”

12 (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to weeks beginning on or after the  
14 date of the enactment of this Act.

15 **SEC. 907. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**  
16 **ERNMENTAL SECTION 457 PLANS.**

17 (a) IN GENERAL.—Section 641(f) of the Economic  
18 Growth and Tax Relief Reconciliation Act of 2001 is  
19 amended by adding at the end the following new para-  
20 graph:

21 “(4) TRANSITION RULE FOR CERTAIN GOVERN-  
22 MENTAL PLANS.—In the case of distributions from  
23 an eligible deferred compensation plan of an em-  
24 ployer described in section 457(e)(1)(A) of the Inter-  
25 nal Revenue Code of 1986 which are made after De-

1 cember 31, 2001, and which are part of a series of  
2 distributions which—

3 “(A) began before January 1, 2002, and

4 “(B) are payable for 10 years or less, the  
5 Internal Revenue Code of 1986 may be applied  
6 to such distributions without regard to the  
7 amendments made by subsection (a)(1)(D).”

8 (b) EFFECTIVE DATE.—The amendment made by  
9 subsection (a) shall take effect as if included in the provi-  
10 sions of section 641 of the Economic Growth and Tax Re-  
11 lief Reconciliation Act of 2001.

12 **SEC. 908. CLARIFICATION OF TREATMENT OF DEFINED**  
13 **BENEFIT PLANS OF INDIAN TRIBAL GOVERN-**  
14 **MENTS.**

15 (a) DEFINITION OF GOVERNMENTAL PLAN.—

16 (1) AMENDMENT TO INTERNAL REVENUE CODE  
17 OF 1986.—Section 414(d) of the Internal Revenue  
18 Code of 1986 (definition of governmental plan) is  
19 amended by adding at the end the following: “The  
20 term ‘governmental plan’ includes a defined benefit  
21 plan established or maintained for its employees by  
22 an Indian tribal government (as defined in section  
23 7701(a)(40)), a subdivision of an Indian tribal gov-  
24 ernment (determined in accordance with section  
25 7871(d)), an agency or instrumentality (or subdivi-

1 sion) of an Indian tribal government, or an entity  
 2 established under Federal, State, or tribal law which  
 3 is wholly owned or controlled by any of the fore-  
 4 going.”.

5 (2) AMENDMENT TO EMPLOYEE RETIREMENT  
 6 INCOME SECURITY ACT OF 1974.—Section 3(32) of  
 7 the Employee Retirement Income Security Act of  
 8 1974 (29 U.S.C. 1002(32)) is amended by adding at  
 9 the end the following: “The term ‘governmental  
 10 plan’ includes a defined benefit plan established or  
 11 maintained for its employees by an Indian tribal  
 12 government (as defined in section 7701(a)(40) of the  
 13 Internal Revenue Code of 1986), a subdivision of an  
 14 Indian tribal government (determined in accordance  
 15 with section 7871(d) of such Code), an agency or in-  
 16 strumentality (or subdivision) of an Indian tribal  
 17 government, or an entity established under Federal,  
 18 State, or tribal law that is wholly owned or con-  
 19 trolled by any of the foregoing.”.

20 (b) CLARIFICATION THAT TRIBAL GOVERNMENTS  
 21 ARE SUBJECT TO THE SAME PLAN RULES AND REGULA-  
 22 TIONS APPLIED TO STATE AND OTHER LOCAL GOVERN-  
 23 MENTS AND THEIR POLICE AND FIREFIGHTERS.—

24 (1) AMENDMENTS TO INTERNAL REVENUE  
 25 CODE OF 1986.—

1 (A) POLICE AND FIREFIGHTERS.—Sub-  
2 paragraph (H) of section 415(b)(2) of such  
3 Code (defining participant) is amended—

4 (i) in clause (i), by striking “State or  
5 political subdivision” and inserting “State,  
6 Indian tribal government (as defined in  
7 section 7701(a)(40)), or any political sub-  
8 division”; and

9 (ii) in clause (ii)(I), by striking “State  
10 or political subdivision” each place it ap-  
11 pears and inserting “State, Indian tribal  
12 government (as so defined), or any political  
13 subdivision thereof”.

14 (B) STATE AND LOCAL GOVERNMENT  
15 PLANS.—

16 (i) IN GENERAL.—Subparagraph (A)  
17 of section 415(b)(10) of such Code (relat-  
18 ing to limitation to equal accrued benefit)  
19 is amended—

20 (I) by inserting “, Indian tribal  
21 government (as defined in section  
22 7701(a)(40)),” after “State”;

23 (II) by inserting “any” before  
24 “political subdivision”; and

1 (III) by inserting “any of” before  
2 “the foregoing”.

3 (ii) CONFORMING AMENDMENT.—The  
4 heading of paragraph (10) of section  
5 415(b) of such Code is amended by strik-  
6 ing “SPECIAL RULE FOR STATE AND” and  
7 inserting “SPECIAL RULE FOR STATE, IN-  
8 DIAN TRIBAL, AND”.

9 (C) GOVERNMENT PICKUP CONTRIBU-  
10 TIONS.—Paragraph (2) of section 414(h) of  
11 such Code (relating to designation by units of  
12 government) is amended by adding at the end  
13 the following new sentence: “This paragraph  
14 shall also apply to any defined benefit plan  
15 maintained by any Indian tribal government (as  
16 defined in section 7701(a)(40)) or political sub-  
17 division thereof, or an agency or instrumentality  
18 of either” .

19 (2) AMENDMENTS TO EMPLOYEE RETIREMENT  
20 INCOME SECURITY ACT OF 1974.—Section 4021(b) of  
21 the Employee Retirement Income Security Act of  
22 1974 (29 U.S.C. 1321(b)) is amended—

23 (A) in paragraph (12), by striking “or” at  
24 the end;

1 (B) in paragraph (13), by striking “plan.”  
2 and inserting “plan; or”; and

3 (C) by adding at the end the following:

4 “(14) which is a defined benefit plan estab-  
5 lished and maintained for its employees by an Indian  
6 tribal government (as defined in section 7701(a)(40)  
7 of the Internal Revenue Code of 1986), a subdivision  
8 of an Indian tribal government (determined in ac-  
9 cordance with section 7871(d) of such Code), an  
10 agency or instrumentality of an Indian tribal govern-  
11 ment or subdivision thereof, or an entity established  
12 under Federal, State, or tribal law that is wholly  
13 owned or controlled by any of the foregoing.”.

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to any year beginning before, on,  
16 or after the date of the enactment of this Act.

17 **SEC. 909. TREATMENT OF DEFINED BENEFIT PLAN AS GOV-**  
18 **ERNMENTAL PLAN.**

19 (a) IN GENERAL.—For purposes of the Internal Rev-  
20 enue Code of 1986 and the Employee Retirement Income  
21 Security Act of 1974, an eligible defined benefit plan shall  
22 be treated as a governmental plan (within the meaning  
23 of section 414(d) of such Code and section 3(32) of such  
24 Act).

1 (b) ELIGIBLE DEFINED BENEFIT PLAN.—For pur-  
2 poses of this section, an eligible defined benefit plan is  
3 a defined benefit plan maintained by a nonprofit corpora-  
4 tion which was—

5 (1) incorporated on September 16, 1998, under  
6 a State nonprofit corporation statute; and

7 (2) organized for the express purpose of sup-  
8 porting the missions and goals of a public corpora-  
9 tion which—

10 (A) was created by a State statute effective  
11 on July 1, 1995;

12 (B) is a governmental entity under State  
13 law; and

14 (C) is a member of the nonprofit corpora-  
15 tion.

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to any year beginning before, on,  
18 or after the date of the enactment of this Act.

19 **SEC. 910. PROVISIONS RELATING TO PLAN AMENDMENTS.**

20 (a) IN GENERAL.—If this section applies to any plan  
21 or contract amendment—

22 (1) such plan or contract shall be treated as  
23 being operated in accordance with the terms of the  
24 plan during the period described in subsection

25 (b)(2)(A), and

1           (2) except as provided by the Secretary of the  
2 Treasury, such plan shall not fail to meet the re-  
3 quirements of section 411(d)(6) of the Internal Rev-  
4 enue Code of 1986 and section 204(g) of the Em-  
5 ployee Retirement Income Security Act of 1974 by  
6 reason of such amendment.

7 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

8           (1) IN GENERAL.—This section shall apply to  
9 any amendment to any plan or annuity contract  
10 which is made—

11           (A) pursuant to any amendment made by  
12 this Act or the Economic Growth and Tax Re-  
13 lief Reconciliation Act of 2001, or pursuant to  
14 any regulation issued by the Secretary of the  
15 Treasury or the Secretary of Labor under such  
16 Acts, and

17           (B) on or before the last day of the first  
18 plan year beginning on or after January 1,  
19 2007, or such later date as the Secretary of the  
20 Treasury may prescribe.

21 In the case of a governmental plan (as defined in  
22 section 414(d) of the Internal Revenue Code of  
23 1986), subparagraph (B) shall be applied by sub-  
24 stituting the date which is 2 years after the date  
25 otherwise applied under subparagraph (B).

1           (2) CONDITIONS.—This section shall not apply  
2 to any amendment unless—

3           (A) during the period—

4                   (i) beginning on the date the legisla-  
5 tive or regulatory amendment described in  
6 paragraph (1)(A) takes effect (or in the  
7 case of a plan or contract amendment not  
8 required by such legislative or regulatory  
9 amendment, the effective date specified by  
10 the plan), and

11                   (ii) ending on the date described in  
12 paragraph (1)(B) (or, if earlier, the date  
13 the plan or contract amendment is adopt-  
14 ed),

15           the plan or contract is operated as if such plan  
16 or contract amendment were in effect; and

17           (B) such plan or contract amendment ap-  
18 plies retroactively for such period.

19       **TITLE X—UNITED STATES TAX**  
20       **COURT MODERNIZATION**

21       **SEC. 1000. AMENDMENT OF 1986 CODE.**

22           Except as otherwise expressly provided, whenever in  
23 this title an amendment or repeal is expressed in terms  
24 of an amendment to, or repeal of, a section or other provi-  
25 sion, the reference shall be considered to be made to a

1 section or other provision of the Internal Revenue Code  
2 of 1986.

3 **Subtitle A—Tax Court Pension and**  
4 **Compensation**

5 **SEC. 1001. ANNUITIES FOR SURVIVORS OF TAX COURT**  
6 **JUDGES WHO ARE ASSASSINATED.**

7 (a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-  
8 TION.—Subsection (h) of section 7448 (relating to annu-  
9 ities to surviving spouses and dependent children of  
10 judges) is amended to read as follows:

11 “(h) ENTITLEMENT TO ANNUITY.—

12 “(1) IN GENERAL.—

13 “(A) ANNUITY TO SURVIVING SPOUSE.—If  
14 a judge described in paragraph (2) is survived  
15 by a surviving spouse but not by a dependent  
16 child, there shall be paid to such surviving  
17 spouse an annuity beginning with the day of the  
18 death of the judge or following the surviving  
19 spouse’s attainment of the age of 50 years,  
20 whichever is the later, in an amount computed  
21 as provided in subsection (m).

22 “(B) ANNUITY TO CHILD.—If such a judge  
23 is survived by a surviving spouse and a depend-  
24 ent child or children, there shall be paid to such  
25 surviving spouse an immediate annuity in an

1 amount computed as provided in subsection  
2 (m), and there shall also be paid to or on behalf  
3 of each such child an immediate annuity equal  
4 to the lesser of—

5 “(i) 10 percent of the average annual  
6 salary of such judge (determined in accord-  
7 ance with subsection (m)), or

8 “(ii) 20 percent of such average an-  
9 nual salary, divided by the number of such  
10 children.

11 “(C) ANNUITY TO SURVIVING DEPENDENT  
12 CHILDREN.—If such a judge leaves no surviving  
13 spouse but leaves a surviving dependent child or  
14 children, there shall be paid to or on behalf of  
15 each such child an immediate annuity equal to  
16 the lesser of—

17 “(i) 20 percent of the average annual  
18 salary of such judge (determined in accord-  
19 ance with subsection (m)), or

20 “(ii) 40 percent of such average an-  
21 nual salary, divided by the number of such  
22 children.

23 “(2) COVERED JUDGES.—Paragraph (1) applies  
24 to any judge electing under subsection (b)—

1           “(A) who dies while a judge after having  
2 rendered at least 5 years of civilian service com-  
3 puted as prescribed in subsection (n), for the  
4 last 5 years of which the salary deductions pro-  
5 vided for by subsection (c)(1) or the deposits  
6 required by subsection (d) have actually been  
7 made or the salary deductions required by the  
8 civil service retirement laws have actually been  
9 made, or

10           “(B) who dies by assassination after hav-  
11 ing rendered less than 5 years of civilian service  
12 computed as prescribed in subsection (n) if, for  
13 the period of such service, the salary deductions  
14 provided for by subsection (c)(1) or the deposits  
15 required by subsection (d) have actually been  
16 made.

17           “(3) TERMINATION OF ANNUITY.—

18           “(A) IN THE CASE OF A SURVIVING  
19 SPOUSE.—The annuity payable to a surviving  
20 spouse under this subsection shall be terminable  
21 upon such surviving spouse’s death or such sur-  
22 viving spouse’s remarriage before attaining age  
23 55.

24           “(B) IN THE CASE OF A CHILD.—The an-  
25 nuity payable to a child under this subsection

1 shall be terminable upon (i) the child attaining  
2 the age of 18 years, (ii) the child's marriage, or  
3 (iii) the child's death, whichever first occurs, ex-  
4 cept that if such child is incapable of self-sup-  
5 port by reason of mental or physical disability  
6 the child's annuity shall be terminable only  
7 upon death, marriage, or recovery from such  
8 disability.

9 “(C) IN THE CASE OF A DEPENDENT  
10 CHILD AFTER DEATH OF SURVIVING SPOUSE.—  
11 In case of the death of a surviving spouse of a  
12 judge leaving a dependent child or children of  
13 the judge surviving such spouse, the annuity of  
14 such child or children shall be recomputed and  
15 paid as provided in paragraph (1)(C).

16 “(D) RECOMPUTATION.—In any case in  
17 which the annuity of a dependent child is termi-  
18 nated under this subsection, the annuities of  
19 any remaining dependent child or children,  
20 based upon the service of the same judge, shall  
21 be recomputed and paid as though the child  
22 whose annuity was so terminated had not sur-  
23 vived such judge.

24 “(4) SPECIAL RULE FOR ASSASSINATED  
25 JUDGES.—In the case of a survivor or survivors of

1 a judge described in paragraph (2)(B), there shall be  
2 deducted from the annuities otherwise payable under  
3 this section an amount equal to—

4 “(A) the amount of salary deductions pro-  
5 vided for by subsection (c)(1) that would have  
6 been made if such deductions had been made  
7 for 5 years of civilian service computed as pre-  
8 scribed in subsection (n) before the judge’s  
9 death, reduced by

10 “(B) the amount of such salary deductions  
11 that were actually made before the date of the  
12 judge’s death.”

13 (b) DEFINITION OF ASSASSINATION.—Section  
14 7448(a) (relating to definitions) is amended by adding at  
15 the end the following new paragraph:

16 “(8) The terms ‘assassinated’ and ‘assassina-  
17 tion’ mean the killing of a judge that is motivated  
18 by the performance by that judge of his or her offi-  
19 cial duties.”

20 (c) DETERMINATION OF ASSASSINATION.—Sub-  
21 section (i) of section 7448 is amended—

22 (1) by striking the subsection heading and in-  
23 sserting the following:

24 “(i) DETERMINATIONS BY CHIEF JUDGE.—

25 “(1) DEPENDENCY AND DISABILITY.—”,

1           (2) by moving the text 2 ems to the right, and  
2           (3) by adding at the end the following new  
3 paragraph:

4           “(2) ASSASSINATION.—The chief judge shall  
5 determine whether the killing of a judge was an as-  
6 sassinatio, subject to review only by the Tax Court.  
7 The head of any Federal agency that investigates  
8 the killing of a judge shall provide information to  
9 the chief judge that would assist the chief judge in  
10 making such a determination.”

11          (d) COMPUTATION OF ANNUITIES.—Subsection (m)  
12 of section 7448 is amended—

13           (1) by striking the subsection heading and in-  
14 sserting the following:

15          “(m) COMPUTATION OF ANNUITIES.—

16           “(1) IN GENERAL.—”,

17           (2) by moving the text 2 ems to the right, and

18           (3) by adding at the end the following new  
19 paragraph:

20           “(2) ASSASSINATED JUDGES.—In the case of a  
21 judge who is assassinated and who has served less  
22 than 3 years, the annuity of the surviving spouse of  
23 such judge shall be based upon the average annual  
24 salary received by such judge for judicial service.”

1 (e) OTHER BENEFITS.—Section 7448 is amended by  
2 adding at the end the following:

3 “(u) OTHER BENEFITS.—In the case of a judge who  
4 is assassinated, an annuity shall be paid under this section  
5 notwithstanding a survivor’s eligibility for or receipt of  
6 benefits under chapter 81 of title 5, United States Code,  
7 except that the annuity for which a surviving spouse is  
8 eligible under this section shall be reduced to the extent  
9 that the total benefits paid under this section and chapter  
10 81 of that title for any year would exceed the current sal-  
11 ary for that year of the office of the judge.”

12 **SEC. 1002. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
13 **JUDICIAL SURVIVOR ANNUITIES.**

14 (a) IN GENERAL.—Subsection (s) of section 7448  
15 (relating to annuities to surviving spouses and dependent  
16 children of judges) is amended to read as follows:

17 “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
18 time that an increase is made under section 8340(b) of  
19 title 5, United States Code, in annuities payable under  
20 subchapter III of chapter 83 of that title, each annuity  
21 payable from the survivors annuity fund under this section  
22 shall be increased at the same time by the same percent-  
23 age by which annuities are increased under such section  
24 8340(b).”



1 **SEC. 1004. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
2 **COURT JUDGES AGE 65 OR OVER.**

3 Section 7472 (relating to expenditures) is amended  
4 by inserting after the first sentence the following new sen-  
5 tence: “Notwithstanding any other provision of law, the  
6 Tax Court is authorized to pay on behalf of its judges,  
7 age 65 or over, any increase in the cost of Federal Em-  
8 ployees’ Group Life Insurance imposed after April 24,  
9 1999, including any expenses generated by such payments,  
10 as authorized by the chief judge in a manner consistent  
11 with such payments authorized by the Judicial Conference  
12 of the United States pursuant to section 604(a)(5) of title  
13 28, United States Code.”

14 **SEC. 1005. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
15 **MENT OF JUDGES’ ACCRUED ANNUAL LEAVE.**

16 (a) IN GENERAL.—Section 7443 (relating to mem-  
17 bership of the Tax Court) is amended by adding at the  
18 end the following new subsection:

19 “(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED  
20 ANNUAL LEAVE.—Notwithstanding the provisions of sec-  
21 tions 5551 and 6301 of title 5, United States Code, when  
22 an individual subject to the leave system provided in chap-  
23 ter 63 of that title is appointed by the President to be  
24 a judge of the Tax Court, the individual shall be entitled  
25 to receive, upon appointment to the Tax Court, a lump-  
26 sum payment from the Tax Court of the accumulated and

1 accrued current annual leave standing to the individual's  
2 credit as certified by the agency from which the individual  
3 resigned.”

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to any judge of the United States  
6 Tax Court who has an outstanding leave balance on the  
7 date of the enactment of this Act and to any individual  
8 appointed by the President to serve as a judge of the  
9 United States Tax Court after such date.

10 **SEC. 1006. PARTICIPATION OF TAX COURT JUDGES IN THE**  
11 **THRIFT SAVINGS PLAN.**

12 (a) IN GENERAL.—Section 7447 (relating to retire-  
13 ment of judges), as amended by this Act, is amended by  
14 adding at the end the following new subsection:

15 “(k) THRIFT SAVINGS PLAN.—

16 “(1) ELECTION TO CONTRIBUTE.—

17 “(A) IN GENERAL.—A judge of the Tax  
18 Court may elect to contribute to the Thrift Sav-  
19 ings Fund established by section 8437 of title  
20 5, United States Code.

21 “(B) PERIOD OF ELECTION.—An election  
22 may be made under this paragraph only during  
23 a period provided under section 8432(b) of title  
24 5, United States Code, for individuals subject to  
25 chapter 84 of such title.

1           “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

2           Except as otherwise provided in this subsection, the  
3           provisions of subchapters III and VII of chapter 84  
4           of title 5, United States Code, shall apply with re-  
5           spect to a judge who makes an election under para-  
6           graph (1).

7           “(3) SPECIAL RULES.—

8                   “(A)     AMOUNT     CONTRIBUTED.—The  
9                   amount contributed by a judge to the Thrift  
10                  Savings Fund in any pay period shall not ex-  
11                  ceed the maximum percentage of such judge’s  
12                  basic pay for such period as allowable under  
13                  section 8440f of title 5, United States Code.  
14                  Basic pay does not include any retired pay paid  
15                  pursuant to this section.

16                   “(B)     CONTRIBUTIONS FOR BENEFIT OF  
17                   JUDGE.—No contributions may be made for the  
18                   benefit of a judge under section 8432(c) of title  
19                   5, United States Code.

20                   “(C)     APPLICABILITY OF SECTION 8433(b)  
21                   OF TITLE 5 WHETHER OR NOT JUDGE RE-  
22                   TIRES.—Section 8433(b) of title 5, United  
23                   States Code, applies with respect to a judge  
24                   who makes an election under paragraph (1) and  
25                   who either—

1 “(i) retires under subsection (b), or  
2 “(ii) ceases to serve as a judge of the  
3 Tax Court but does not retire under sub-  
4 section (b).

5 Retirement under subsection (b) is a separation  
6 from service for purposes of subchapters III  
7 and VII of chapter 84 of that title.

8 “(D) APPLICABILITY OF SECTION  
9 8351(b)(5) OF TITLE 5.—The provisions of sec-  
10 tion 8351(b)(5) of title 5, United States Code,  
11 shall apply with respect to a judge who makes  
12 an election under paragraph (1).

13 “(E) EXCEPTION.—Notwithstanding sub-  
14 paragraph (C), if any judge retires under this  
15 section, or resigns without having met the age  
16 and service requirements set forth under sub-  
17 section (b)(2), and such judge’s nonforfeitable  
18 account balance is less than an amount that the  
19 Executive Director of the Office of Personnel  
20 Management prescribes by regulation, the Exec-  
21 utive Director shall pay the nonforfeitable ac-  
22 count balance to the participant in a single pay-  
23 ment.”

24 (b) EFFECTIVE DATE.—The amendment made by  
25 this section shall take effect on the date of the enactment

1 of this Act, except that United States Tax Court judges  
2 may only begin to participate in the Thrift Savings Plan  
3 at the next open season beginning after such date.

4 **SEC. 1007. EXEMPTION OF TEACHING COMPENSATION OF**  
5 **RETIRED JUDGES FROM LIMITATION ON**  
6 **OUTSIDE EARNED INCOME.**

7 (a) IN GENERAL.—Section 7447 (relating to retire-  
8 ment of judges), as amended by this Act, is amended by  
9 adding at the end the following new subsection:

10 “(1) TEACHING COMPENSATION OF RETIRED  
11 JUDGES.—For purposes of the limitation under section  
12 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.  
13 App.), any compensation for teaching approved under sec-  
14 tion 502(a)(5) of such Act shall not be treated as outside  
15 earned income when received by a judge of the Tax Court  
16 who has retired under subsection (b) for teaching per-  
17 formed during any calendar year for which such a judge  
18 has met the requirements of subsection (c), as certified  
19 by the chief judge of the Tax Court.”

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to any individual serving as a re-  
22 tired judge of the United States Tax Court on or after  
23 the date of the enactment of this Act.

1 **SEC. 1008. GENERAL PROVISIONS RELATING TO MAG-**  
2 **ISTRATE JUDGES OF THE TAX COURT.**

3 (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO  
4 MAGISTRATE JUDGE OF THE TAX COURT.—The heading  
5 of section 7443A is amended to read as follows:

6 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

7 (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-  
8 section (a) of section 7443A is amended to read as follows:

9 “(a) APPOINTMENT, TENURE, AND REMOVAL.—

10 “(1) APPOINTMENT.—The chief judge may,  
11 from time to time, appoint and reappoint magistrate  
12 judges of the Tax Court for a term of 8 years. The  
13 magistrate judges of the Tax Court shall proceed  
14 under such rules as may be promulgated by the Tax  
15 Court.

16 “(2) REMOVAL.—Removal of a magistrate  
17 judge of the Tax Court during the term for which  
18 he or she is appointed shall be only for incom-  
19 petency, misconduct, neglect of duty, or physical or  
20 mental disability, but the office of a magistrate  
21 judge of the Tax Court shall be terminated if the  
22 judges of the Tax Court determine that the services  
23 performed by the magistrate judge of the Tax Court  
24 are no longer needed. Removal shall not occur unless  
25 a majority of all the judges of the Tax Court concur  
26 in the order of removal. Before any order of removal

1 shall be entered, a full specification of the charges  
2 shall be furnished to the magistrate judge of the Tax  
3 Court, and he or she shall be accorded by the judges  
4 of the Tax Court an opportunity to be heard on the  
5 charges.”

6 (c) SALARY.—Section 7443A(d) (relating to salary)  
7 is amended by striking “90” and inserting “92”.

8 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-  
9 SIONS.—Section 7443A is amended by adding at the end  
10 the following new subsection:

11 “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-  
12 SIONS.—

13 “(1) IN GENERAL.—A magistrate judge of the  
14 Tax Court appointed under this section shall be ex-  
15 empt from the provisions of subchapter I of chapter  
16 63 of title 5, United States Code.

17 “(2) TREATMENT OF UNUSED LEAVE.—

18 “(A) AFTER SERVICE AS MAGISTRATE  
19 JUDGE.—If an individual who is exempted  
20 under paragraph (1) from the subchapter re-  
21 ferred to in such paragraph was previously sub-  
22 ject to such subchapter and, without a break in  
23 service, again becomes subject to such sub-  
24 chapter on completion of the individual’s service  
25 as a magistrate judge, the unused annual leave

1 and sick leave standing to the individual's cred-  
2 it when such individual was exempted from this  
3 subchapter is deemed to have remained to the  
4 individual's credit.

5 “(B) COMPUTATION OF ANNUITY.—In  
6 computing an annuity under section 8339 of  
7 title 5, United States Code, the total service of  
8 an individual specified in subparagraph (A) who  
9 retires on an immediate annuity or dies leaving  
10 a survivor or survivors entitled to an annuity  
11 includes, without regard to the limitations im-  
12 posed by subsection (f) of such section 8339,  
13 the days of unused sick leave standing to the  
14 individual's credit when such individual was ex-  
15 empted from subchapter I of chapter 63 of title  
16 5, United States Code, except that these days  
17 will not be counted in determining average pay  
18 or annuity eligibility.

19 “(C) LUMP SUM PAYMENT.—Any accumu-  
20 lated and current accrued annual leave or vaca-  
21 tion balances credited to a magistrate judge as  
22 of the date of the enactment of this subsection  
23 shall be paid in a lump sum at the time of sepa-  
24 ration from service pursuant to the provisions  
25 and restrictions set forth in section 5551 of

1 title 5, United States Code, and related provi-  
2 sions referred to in such section.”

3 (e) CONFORMING AMENDMENTS.—

4 (1) The heading of subsection (b) of section  
5 7443A is amended by striking “SPECIAL TRIAL  
6 JUDGES” and inserting “Magistrate Judges of the  
7 Tax Court”.

8 (2) Section 7443A(b) is amended by striking  
9 “special trial judges of the court” and inserting  
10 “magistrate judges of the Tax Court”.

11 (3) Subsections (c) and (d) of section 7443A  
12 are amended by striking “special trial judge” and  
13 inserting “magistrate judge of the Tax Court” each  
14 place it appears.

15 (4) Section 7443A(e) is amended by striking  
16 “special trial judges” and inserting “magistrate  
17 judges of the Tax Court”.

18 (5) Section 7456(a) is amended by striking  
19 “special trial judge” each place it appears and in-  
20 serting “magistrate judge”.

21 (6) Subsection (c) of section 7471 is amend-  
22 ed—

23 (A) by striking the subsection heading and  
24 inserting “MAGISTRATE JUDGES OF THE TAX  
25 COURT.—”, and

1 (B) by striking “special trial judges” and  
2 inserting “magistrate judges”.

3 **SEC. 1009. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
4 **PENDENT CHILDREN OF MAGISTRATE**  
5 **JUDGES OF THE TAX COURT.**

6 (a) DEFINITIONS.—Section 7448(a) (relating to defi-  
7 nitions), as amended by this Act, is amended by redesi-  
8 gnating paragraphs (5), (6), (7), and (8) as paragraphs (7),  
9 (8), (9), and (10), respectively, and by inserting after  
10 paragraph (4) the following new paragraphs:

11 “(5) The term ‘magistrate judge’ means a judi-  
12 cial officer appointed pursuant to section 7443A, in-  
13 cluding any individual receiving an annuity under  
14 section 7443B, or chapters 83 or 84, as the case  
15 may be, of title 5, United States Code, whether or  
16 not performing judicial duties under section 7443C.

17 “(6) The term ‘magistrate judge’s salary’  
18 means the salary of a magistrate judge received  
19 under section 7443A(d), any amount received as an  
20 annuity under section 7443B, or chapters 83 or 84,  
21 as the case may be, of title 5, United States Code,  
22 and compensation received under section 7443C.”

23 (b) ELECTION.—Subsection (b) of section 7448 (re-  
24 lating to annuities to surviving spouses and dependent  
25 children of judges) is amended—

1           (1) by striking the subsection heading and in-  
2           serting the following:

3           “(b) ELECTION.—

4           “    (1) JUDGES.—”,

5           (2) by moving the text 2 ems to the right, and

6           (3) by adding at the end the following new  
7           paragraph:

8           “    (2) MAGISTRATE JUDGES.—Any magistrate  
9           judge may by written election filed with the chief  
10          judge bring himself or herself within the purview of  
11          this section. Such election shall be filed not later  
12          than the later of 6 months after—

13                   “(A) 6 months after the date of the enact-  
14                   ment of this paragraph,

15                   “(B) the date the judge takes office, or

16                   “(C) the date the judge marries.”

17          (c) CONFORMING AMENDMENTS.—

18           (1) The heading of section 7448 is amended by  
19           inserting “**AND MAGISTRATE JUDGES**” after  
20           “**JUDGES**”.

21           (2) The item relating to section 7448 in the  
22           table of sections for part I of subchapter C of chap-  
23           ter 76 is amended by inserting “and magistrate  
24           judges” after “judges”.

1           (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
2           (m), (n), and (u) of section 7448, as amended by  
3           this Act, are each amended—

4                   (A) by inserting “or magistrate judge”  
5                   after “judge” each place it appears other than  
6                   in the phrase “chief judge”, and

7                   (B) by inserting “or magistrate judge’s”  
8                   after “judge’s” each place it appears.

9           (4) Section 7448(c) is amended—

10                   (A) in paragraph (1), by striking “Tax  
11                   Court judges” and inserting “Tax Court judi-  
12                   cial officers”,

13                   (B) in paragraph (2)—

14                           (i) in subparagraph (A), by inserting  
15                           “and section 7443A(d)” after “(a)(4)”,  
16                           and

17                           (ii) in subparagraph (B), by striking  
18                           “subsection (a)(4)” and inserting “sub-  
19                           sections (a)(4) and (a)(6)”.

20           (5) Section 7448(g) is amended by inserting  
21           “or section 7443B” after “section 7447” each place  
22           it appears, and by inserting “or an annuity” after  
23           “retired pay”.

24           (6) Section 7448(j)(1) is amended—

1 (A) in subparagraph (A), by striking  
2 “service or retired” and inserting “service, re-  
3 tired”, and by inserting “, or receiving any an-  
4 nuity under section 7443B or chapters 83 or 84  
5 of title 5, United States Code,” after “section  
6 7447”, and

7 (B) in the last sentence, by striking “sub-  
8 sections (a) (6) and (7)” and inserting “para-  
9 graphs (8) and (9) of subsection (a)”.

10 (7) Section 7448(m)(1), as amended by this  
11 Act, is amended—

12 (A) by inserting “or any annuity under  
13 section 7443B or chapters 83 or 84 of title 5,  
14 United States Code” after “7447(d)”, and

15 (B) by inserting “or 7443B(m)(1)(B) after  
16 “7447(f)(4)”.

17 (8) Section 7448(n) is amended by inserting  
18 “his years of service pursuant to any appointment  
19 under section 7443A,” after “of the Tax Court,”.

20 (9) Section 3121(b)(5)(E) is amended by in-  
21 sserting “or magistrate judge” before “of the United  
22 States Tax Court”.

23 (10) Section 210(a)(5)(E) of the Social Secu-  
24 rity Act is amended by inserting “or magistrate  
25 judge” before “of the United States Tax Court”.

1 **SEC. 1010. RETIREMENT AND ANNUITY PROGRAM.**

2 (a) RETIREMENT AND ANNUITY PROGRAM.—Part I  
3 of subchapter C of chapter 76 is amended by inserting  
4 after section 7443A the following new section:

5 **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
6 **THE TAX COURT.**

7 “(a) RETIREMENT BASED ON YEARS OF SERVICE.—  
8 A magistrate judge of the Tax Court to whom this section  
9 applies and who retires from office after attaining the age  
10 of 65 years and serving at least 14 years, whether continu-  
11 ously or otherwise, as such magistrate judge shall, subject  
12 to subsection (f), be entitled to receive, during the remain-  
13 der of the magistrate judge’s lifetime, an annuity equal  
14 to the salary being received at the time the magistrate  
15 judge leaves office.

16 “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
17 MENT.—A magistrate judge of the Tax Court to whom  
18 this section applies who is not reappointed following the  
19 expiration of the term of office of such magistrate judge  
20 and who retires upon the completion of the term shall,  
21 subject to subsection (f), be entitled to receive, upon at-  
22 taining the age of 65 years and during the remainder of  
23 such magistrate judge’s lifetime, an annuity equal to that  
24 portion of the salary being received at the time the mag-  
25 istrate judge leaves office which the aggregate number of  
26 years of service, not to exceed 14, bears to 14, if—

1           “(1) such magistrate judge has served at least  
2           1 full term as a magistrate judge, and

3           “(2) not earlier than 9 months before the date  
4           on which the term of office of such magistrate judge  
5           expires, and not later than 6 months before such  
6           date, such magistrate judge notified the chief judge  
7           of the Tax Court in writing that such magistrate  
8           judge was willing to accept reappointment to the po-  
9           sition in which such magistrate judge was serving.

10          “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate  
11         judge of the Tax Court to whom this section applies and  
12         who retires after serving at least 8 years, whether continu-  
13         ously or otherwise, as such a magistrate judge shall, sub-  
14         ject to subsection (f), be entitled to receive, upon attaining  
15         the age of 65 years and during the remainder of the mag-  
16         istrate judge’s lifetime, an annuity equal to that portion  
17         of the salary being received at the time the magistrate  
18         judge leaves office which the aggregate number of years  
19         of service, not to exceed 14, bears to 14. Such annuity  
20         shall be reduced by  $\frac{1}{6}$  of 1 percent for each full month  
21         such magistrate judge was under the age of 65 at the time  
22         the magistrate judge left office, except that such reduction  
23         shall not exceed 20 percent.

24          “(d) RETIREMENT FOR DISABILITY.—A magistrate  
25         judge of the Tax Court to whom this section applies, who

1 has served at least 5 years, whether continuously or other-  
2 wise, as such a magistrate judge and who retires or is re-  
3 moved from office upon the sole ground of mental or phys-  
4 ical disability shall, subject to subsection (f), be entitled  
5 to receive, during the remainder of the magistrate judge's  
6 lifetime, an annuity equal to 40 percent of the salary being  
7 received at the time of retirement or removal or, in the  
8 case of a magistrate judge who has served for at least 10  
9 years, an amount equal to that proportion of the salary  
10 being received at the time of retirement or removal which  
11 the aggregate number of years of service, not to exceed  
12 14, bears to 14.

13       “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate  
14 judge of the Tax Court who is entitled to an annuity under  
15 this section is also entitled to a cost-of-living adjustment  
16 in such annuity, calculated and payable in the same man-  
17 ner as adjustments under section 8340(b) of title 5,  
18 United States Code, except that any such annuity, as in-  
19 creased under this subsection, may not exceed the salary  
20 then payable for the position from which the magistrate  
21 judge retired or was removed.

22       “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-  
23 ITIES.—

24               “(1) IN GENERAL.—A magistrate judge of the  
25 Tax Court shall be entitled to an annuity under this

1 section if the magistrate judge elects an annuity  
2 under this section by notifying the chief judge of the  
3 Tax Court not later than the later of—

4 “(A) 5 years after the magistrate judge of  
5 the Tax Court begins judicial service, or

6 “(B) 5 years after the date of the enact-  
7 ment of this subsection.

8 Such notice shall be given in accordance with proce-  
9 dures prescribed by the Tax Court.

10 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—

11 A magistrate judge who elects to receive an annuity  
12 under this section shall not be entitled to receive—

13 “(A) any annuity to which such magistrate  
14 judge would otherwise have been entitled under  
15 subchapter III of chapter 83, or under chapter  
16 84 (except for subchapters III and VII), of title  
17 5, United States Code, for service performed as  
18 a magistrate or otherwise,

19 “(B) an annuity or salary in senior status  
20 or retirement under section 371 or 372 of title  
21 28, United States Code,

22 “(C) retired pay under section 7447, or

23 “(D) retired pay under section 7296 of  
24 title 38, United States Code.

1           “(3) COORDINATION WITH TITLE 5.—A mag-  
2           istrate judge of the Tax Court who elects to receive  
3           an annuity under this section—

4                   “(A) shall not be subject to deductions and  
5                   contributions otherwise required by section  
6                   8334(a) of title 5, United States Code,

7                   “(B) shall be excluded from the operation  
8                   of chapter 84 (other than subchapters III and  
9                   VII) of such title 5, and

10                   “(C) is entitled to a lump-sum credit under  
11                   section 8342(a) or 8424 of such title 5, as the  
12                   case may be.

13           “(g) CALCULATION OF SERVICE.—For purposes of  
14           calculating an annuity under this section—

15                   “(1) service as a magistrate judge of the Tax  
16                   Court to whom this section applies may be credited,  
17                   and

18                   “(2) each month of service shall be credited as  
19                    $\frac{1}{12}$  of a year, and the fractional part of any month  
20                   shall not be credited.

21           “(h) COVERED POSITIONS AND SERVICE.—This sec-  
22           tion applies to any magistrate judge of the Tax Court or  
23           special trial judge of the Tax Court appointed under this  
24           subchapter, but only with respect to service as such a mag-  
25           istrate judge or special trial judge after a date not earlier

1 than 9½ years before the date of the enactment of this  
2 subsection.

3 “(i) PAYMENTS PURSUANT TO COURT ORDER.—

4 “(1) IN GENERAL.—Payments under this sec-  
5 tion which would otherwise be made to a magistrate  
6 judge of the Tax Court based upon his or her service  
7 shall be paid (in whole or in part) by the chief judge  
8 of the Tax Court to another person if and to the ex-  
9 tent expressly provided for in the terms of any court  
10 decree of divorce, annulment, or legal separation, or  
11 the terms of any court order or court-approved prop-  
12 erty settlement agreement incident to any court de-  
13 cree of divorce, annulment, or legal separation. Any  
14 payment under this paragraph to a person bars re-  
15 covery by any other person.

16 “(2) REQUIREMENTS FOR PAYMENT.—Para-  
17 graph (1) shall apply only to payments made by the  
18 chief judge of the Tax Court after the date of re-  
19 ceipt by the chief judge of written notice of such de-  
20 cree, order, or agreement, and such additional infor-  
21 mation as the chief judge may prescribe.

22 “(3) COURT DEFINED.—For purposes of this  
23 subsection, the term ‘court’ means any court of any  
24 State, the District of Columbia, the Commonwealth  
25 of Puerto Rico, Guam, the Northern Mariana Is-

1 lands, or the Virgin Islands, and any Indian tribal  
2 court or courts of Indian offense.

3 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
4 ITS.—

5 “(1) DEDUCTIONS.—Beginning with the next  
6 pay period after the chief judge of the Tax Court re-  
7 ceives a notice under subsection (f) that a mag-  
8 istrate judge of the Tax Court has elected an annu-  
9 ity under this section, the chief judge shall deduct  
10 and withhold 1 percent of the salary of such mag-  
11 istrate judge. Amounts shall be so deducted and  
12 withheld in a manner determined by the chief judge.  
13 Amounts deducted and withheld under this sub-  
14 section shall be deposited in the Treasury of the  
15 United States to the credit of the Tax Court Judi-  
16 cial Officers’ Retirement Fund. Deductions under  
17 this subsection from the salary of a magistrate judge  
18 shall terminate upon the retirement of the mag-  
19 istrate judge or upon completion of 14 years of serv-  
20 ice for which contributions under this section have  
21 been made, whether continuously or otherwise, as  
22 calculated under subsection (g), whichever occurs  
23 first.

24 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF  
25 CLAIMS.—Each magistrate judge of the Tax Court

1       who makes an election under subsection (f) shall be  
2       deemed to consent and agree to the deductions from  
3       salary which are made under paragraph (1). Pay-  
4       ment of such salary less such deductions (and any  
5       deductions made under section 7448) is a full and  
6       complete discharge and acquittance of all claims and  
7       demands for all services rendered by such magistrate  
8       judge during the period covered by such payment,  
9       except the right to those benefits to which the mag-  
10      istrate judge is entitled under this section (and sec-  
11      tion 7448).

12      “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-  
13      istrate judge of the Tax Court who makes an election  
14      under subsection (f) may deposit, for service performed  
15      before such election for which contributions may be made  
16      under this section, an amount equal to 1 percent of the  
17      salary received for that service. Credit for any period cov-  
18      ered by that service may not be allowed for purposes of  
19      an annuity under this section until a deposit under this  
20      subsection has been made for that period.

21      “(l) INDIVIDUAL RETIREMENT RECORDS.—The  
22      amounts deducted and withheld under subsection (j), and  
23      the amounts deposited under subsection (k), shall be cred-  
24      ited to individual accounts in the name of each magistrate  
25      judge of the Tax Court from whom such amounts are re-

1 ceived, for credit to the Tax Court Judicial Officers' Re-  
2 tirement Fund.

3 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

4 “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
5 PERFORM JUDICIAL DUTIES.—Subject to paragraph  
6 (3), any magistrate judge of the Tax Court who re-  
7 tires under this section and who fails to perform ju-  
8 dicial duties required of such individual by section  
9 7443C shall forfeit all rights to an annuity under  
10 this section for a 1-year period which begins on the  
11 1st day on which such individual fails to perform  
12 such duties.

13 “(2) PERMANENT FORFEITURE OF RETIRED  
14 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES  
15 PERFORMED.—Subject to paragraph (3), any mag-  
16 istrate judge of the Tax Court who retires under this  
17 section and who thereafter performs (or supervises  
18 or directs the performance of) legal or accounting  
19 services in the field of Federal taxation for the indi-  
20 vidual's client, the individual's employer, or any of  
21 such employer's clients, shall forfeit all rights to an  
22 annuity under this section for all periods beginning  
23 on or after the first day on which the individual per-  
24 forms (or supervises or directs the performance of)  
25 such services. The preceding sentence shall not apply

1 to any civil office or employment under the Govern-  
2 ment of the United States.

3 “(3) FORFEITURES NOT TO APPLY WHERE IN-  
4 DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-  
5 ITY.—

6 “(A) IN GENERAL.—If a magistrate judge  
7 of the Tax Court makes an election under this  
8 paragraph—

9 “(i) paragraphs (1) and (2) (and sec-  
10 tion 7443C) shall not apply to such mag-  
11 istrate judge beginning on the date such  
12 election takes effect, and

13 “(ii) the annuity payable under this  
14 section to such magistrate judge, for peri-  
15 ods beginning on or after the date such  
16 election takes effect, shall be equal to the  
17 annuity to which such magistrate judge is  
18 entitled on the day before such effective  
19 date.

20 “(B) ELECTION REQUIREMENTS.—An elec-  
21 tion under subparagraph (A)—

22 “(i) may be made by a magistrate  
23 judge of the Tax Court eligible for retire-  
24 ment under this section, and

1                   “(ii) shall be filed with the chief judge  
2                   of the Tax Court.

3                   Such an election, once it takes effect, shall be  
4                   irrevocable.

5                   “(C) EFFECTIVE DATE OF ELECTION.—  
6                   Any election under subparagraph (A) shall take  
7                   effect on the first day of the first month fol-  
8                   lowing the month in which the election is made.

9                   “(4) ACCEPTING OTHER EMPLOYMENT.—Any  
10                  magistrate judge of the Tax Court who retires under  
11                  this section and thereafter accepts compensation for  
12                  civil office or employment under the United States  
13                  Government (other than for the performance of  
14                  functions as a magistrate judge of the Tax Court  
15                  under section 7443C) shall forfeit all rights to an  
16                  annuity under this section for the period for which  
17                  such compensation is received. For purposes of this  
18                  paragraph, the term ‘compensation’ includes retired  
19                  pay or salary received in retired status.

20                  “(n) LUMP-SUM PAYMENTS.—

21                   “(1) ELIGIBILITY.—

22                   “(A) IN GENERAL.—Subject to paragraph  
23                   (2), an individual who serves as a magistrate  
24                   judge of the Tax Court and—

1           “(i) who leaves office and is not re-  
2 appointed as a magistrate judge of the Tax  
3 Court for at least 31 consecutive days,

4           “(ii) who files an application with the  
5 chief judge of the Tax Court for payment  
6 of a lump-sum credit,

7           “(iii) is not serving as a magistrate  
8 judge of the Tax Court at the time of fil-  
9 ing of the application, and

10           “(iv) will not become eligible to re-  
11 ceive an annuity under this section within  
12 31 days after filing the application,

13 is entitled to be paid the lump-sum credit. Pay-  
14 ment of the lump-sum credit voids all rights to  
15 an annuity under this section based on the serv-  
16 ice on which the lump-sum credit is based, until  
17 that individual resumes office as a magistrate  
18 judge of the Tax Court.

19           “(B) PAYMENT TO SURVIVORS.—Lump-  
20 sum benefits authorized by subparagraphs (C),  
21 (D), and (E) of this paragraph shall be paid to  
22 the person or persons surviving the magistrate  
23 judge of the Tax Court and alive on the date  
24 title to the payment arises, in the order of pre-  
25 cedence set forth in subsection (o) of section 376

1 of title 28, United States Code, and in accord-  
2 ance with the last 2 sentences of paragraph (1)  
3 of that subsection. For purposes of the pre-  
4 ceeding sentence, the term ‘judicial official’ as  
5 used in subsection (o) of such section 376 shall  
6 be deemed to mean ‘magistrate judge of the  
7 Tax Court’ and the terms ‘Administrative Of-  
8 fice of the United States Courts’ and ‘Director  
9 of the Administrative Office of the United  
10 States Courts’ shall be deemed to mean ‘chief  
11 judge of the Tax Court’.

12 “(C) PAYMENT UPON DEATH OF JUDGE  
13 BEFORE RECEIPT OF ANNUITY.—If a mag-  
14 istrate judge of the Tax Court dies before re-  
15 ceiving an annuity under this section, the lump-  
16 sum credit shall be paid.

17 “(D) PAYMENT OF ANNUITY REMAIN-  
18 DER.—If all annuity rights under this section  
19 based on the service of a deceased magistrate  
20 judge of the Tax Court terminate before the  
21 total annuity paid equals the lump-sum credit,  
22 the difference shall be paid.

23 “(E) PAYMENT UPON DEATH OF JUDGE  
24 DURING RECEIPT OF ANNUITY.—If a magistrate  
25 judge of the Tax Court who is receiving an an-

1           nuity under this section dies, any accrued annu-  
2           ity benefits remaining unpaid shall be paid.

3           “(F) PAYMENT UPON TERMINATION.—Any  
4           accrued annuity benefits remaining unpaid on  
5           the termination, except by death, of the annuity  
6           of a magistrate judge of the Tax Court shall be  
7           paid to that individual.

8           “(G) PAYMENT UPON ACCEPTING OTHER  
9           EMPLOYMENT.—Subject to paragraph (2), a  
10          magistrate judge of the Tax Court who forfeits  
11          rights to an annuity under subsection (m)(4)  
12          before the total annuity paid equals the lump-  
13          sum credit shall be entitled to be paid the dif-  
14          ference if the magistrate judge of the Tax  
15          Court files an application with the chief judge  
16          of the Tax Court for payment of that dif-  
17          ference. A payment under this subparagraph  
18          voids all rights to an annuity on which the pay-  
19          ment is based.

20          “(2) SPOUSES AND FORMER SPOUSES.—

21                 “(A) IN GENERAL.—Payment of the lump-  
22                 sum credit under paragraph (1)(A) or a pay-  
23                 ment under paragraph (1)(G)—

24                         “(i) may be made only if any current  
25                         spouse and any former spouse of the mag-

1           istrate judge of the Tax Court are notified  
2           of the magistrate judge’s application, and

3           “(ii) shall be subject to the terms of  
4           a court decree of divorce, annulment, or  
5           legal separation, or any court or court ap-  
6           proved property settlement agreement inci-  
7           dent to such decree, if—

8                   “(I) the decree, order, or agree-  
9                   ment expressly relates to any portion  
10                  of the lump-sum credit or other pay-  
11                  ment involved, and

12                  “(II) payment of the lump-sum  
13                  credit or other payment would extin-  
14                  guish entitlement of the magistrate  
15                  judge’s spouse or former spouse to  
16                  any portion of an annuity under sub-  
17                  section (i).

18           “(B) NOTIFICATION.—Notification of a  
19           spouse or former spouse under this paragraph  
20           shall be made in accordance with such proce-  
21           dures as the chief judge of the Tax Court shall  
22           prescribe. The chief judge may provide under  
23           such procedures that subparagraph (A)(i) may  
24           be waived with respect to a spouse or former  
25           spouse if the magistrate judge establishes to the

1 satisfaction of the chief judge that the where-  
2 abouts of such spouse or former spouse cannot  
3 be determined.

4 “(C) RESOLUTION OF 2 OR MORE OR-  
5 DERS.—The chief judge shall prescribe proce-  
6 dures under which this paragraph shall be ap-  
7 plied in any case in which the chief judge re-  
8 ceives 2 or more orders or decrees described in  
9 subparagraph (A).

10 “(3) DEFINITION.—For purposes of this sub-  
11 section, the term ‘lump-sum credit’ means the  
12 unrefunded amount consisting of—

13 “(A) retirement deductions made under  
14 this section from the salary of a magistrate  
15 judge of the Tax Court,

16 “(B) amounts deposited under subsection  
17 (k) by a magistrate judge of the Tax Court cov-  
18 ering earlier service, and

19 “(C) interest on the deductions and depos-  
20 its which, for any calendar year, shall be equal  
21 to the overall average yield to the Tax Court  
22 Judicial Officers’ Retirement Fund during the  
23 preceding fiscal year from all obligations pur-  
24 chased by the Secretary during such fiscal year

1 under subsection (o); but does not include inter-  
2 est—

3 “(i) if the service covered thereby ag-  
4 gregates 1 year or less, or

5 “(ii) for the fractional part of a  
6 month in the total service.

7 “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT  
8 FUND.—

9 “(1) ESTABLISHMENT.—There is established in  
10 the Treasury a fund which shall be known as the  
11 ‘Tax Court Judicial Officers’ Retirement Fund’.  
12 Amounts in the Fund are authorized to be appro-  
13 priated for the payment of annuities, refunds, and  
14 other payments under this section.

15 “(2) INVESTMENT OF FUND.—The Secretary  
16 shall invest, in interest bearing securities of the  
17 United States, such currently available portions of  
18 the Tax Court Judicial Officers’ Retirement Fund as  
19 are not immediately required for payments from the  
20 Fund. The income derived from these investments  
21 constitutes a part of the Fund.

22 “(3) UNFUNDED LIABILITY.—

23 “(A) IN GENERAL.—There are authorized  
24 to be appropriated to the Tax Court Judicial  
25 Officers’ Retirement Fund amounts required to

1 reduce to zero the unfunded liability of the  
2 Fund.

3 “(B) UNFUNDED LIABILITY.—For pur-  
4 poses of subparagraph (A), the term ‘unfunded  
5 liability’ means the estimated excess, deter-  
6 mined on an annual basis in accordance with  
7 the provisions of section 9503 of title 31,  
8 United States Code, of the present value of all  
9 benefits payable from the Tax Court Judicial  
10 Officers’ Retirement Fund over the sum of—

11 “(i) the present value of deductions to  
12 be withheld under this section from the fu-  
13 ture basic pay of magistrate judges of the  
14 Tax Court, plus

15 “(ii) the balance in the Fund as of the  
16 date the unfunded liability is determined.

17 “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

18 “(1) ELECTION TO CONTRIBUTE.—

19 “(A) IN GENERAL.—A magistrate judge of  
20 the Tax Court who elects to receive an annuity  
21 under this section or under section 611 of the  
22 National Employee Savings and Trust Equity  
23 Guarantee Act of 2005 may elect to contribute  
24 an amount of such individual’s basic pay to the

1 Thrift Savings Fund established by section  
2 8437 of title 5, United States Code.

3 “(B) PERIOD OF ELECTION.—An election  
4 may be made under this paragraph only during  
5 a period provided under section 8432(b) of title  
6 5, United States Code, for individuals subject to  
7 chapter 84 of such title.

8 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
9 Except as otherwise provided in this subsection, the  
10 provisions of subchapters III and VII of chapter 84  
11 of title 5, United States Code, shall apply with re-  
12 spect to a magistrate judge who makes an election  
13 under paragraph (1).

14 “(3) SPECIAL RULES.—

15 “(A) AMOUNT CONTRIBUTED.—The  
16 amount contributed by a magistrate judge to  
17 the Thrift Savings Fund in any pay period shall  
18 not exceed the maximum percentage of such  
19 judge’s basic pay for such pay period as allow-  
20 able under section 8440f of title 5, United  
21 States Code.

22 “(B) CONTRIBUTIONS FOR BENEFIT OF  
23 JUDGE.—No contributions may be made for the  
24 benefit of a magistrate judge under section  
25 8432(c) of title 5, United States Code.

1           “(C) APPLICABILITY OF SECTION 8433(b)  
2           OF TITLE 5.—Section 8433(b) of title 5, United  
3           States Code, applies with respect to a mag-  
4           istrate judge who makes an election under para-  
5           graph (1) and—

6                   “(i) who retires entitled to an imme-  
7                   diate annuity under this section (including  
8                   a disability annuity under subsection (d) of  
9                   this section) or section 611 of the National  
10                  Employee Savings and Trust Equity Guar-  
11                  antee Act of 2005,

12                   “(ii) who retires before attaining age  
13                   65 but is entitled, upon attaining age 65,  
14                   to an annuity under this section or section  
15                   611 of the National Employee Savings and  
16                   Trust Equity Guarantee Act of 2005, or

17                   “(iii) who retires before becoming en-  
18                   titled to an immediate annuity, or an an-  
19                   nuity upon attaining age 65, under this  
20                   section or section 611 of the National Em-  
21                   ployee Savings and Trust Equity Guar-  
22                   antee Act of 2005.

23           “(D) SEPARATION FROM SERVICE.—With  
24           respect to a magistrate judge to whom this sub-  
25           section applies, retirement under this section or

1 section 611 of the National Employee Savings  
2 and Trust Equity Guarantee Act of 2005 is a  
3 separation from service for purposes of sub-  
4 chapters III and VII of chapter 84 of title 5,  
5 United States Code.

6 “(4) DEFINITIONS.—For purposes of this sub-  
7 section, the terms ‘retirement’ and ‘retire’ include  
8 removal from office under section 7443A(a)(2) on  
9 the sole ground of mental or physical disability.

10 “(5) OFFSET.—In the case of a magistrate  
11 judge who receives a distribution from the Thrift  
12 Savings Fund and who later receives an annuity  
13 under this section, that annuity shall be offset by an  
14 amount equal to the amount which represents the  
15 Government’s contribution to that person’s Thrift  
16 Savings Account, without regard to earnings attrib-  
17 utable to that amount. Where such an offset would  
18 exceed 50 percent of the annuity to be received in  
19 the first year, the offset may be divided equally over  
20 the first 2 years in which that person receives the  
21 annuity.

22 “(6) EXCEPTION.—Notwithstanding clauses (i)  
23 and (ii) of paragraph (3)(C), if any magistrate judge  
24 retires under circumstances making such magistrate  
25 judge eligible to make an election under subsection

1 (b) of section 8433 of title 5, United States Code,  
 2 and such magistrate judge’s nonforfeitable account  
 3 balance is less than an amount that the Executive  
 4 Director of the Office of Personnel Management pre-  
 5 scribes by regulation, the Executive Director shall  
 6 pay the nonforfeitable account balance to the partici-  
 7 pant in a single payment.”

8 (b) CONFORMING AMENDMENT.—The table of sec-  
 9 tions for part I of subchapter C of chapter 76 is amended  
 10 by inserting after the item relating to section 7443A the  
 11 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax Court.”.

12 **SEC. 1011. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
 13 **COURT.**

14 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND  
 15 SECTION 7443B OF THE INTERNAL REVENUE CODE OF  
 16 1986.—A magistrate judge of the United States Tax  
 17 Court in active service on the date of the enactment of  
 18 this Act shall, subject to subsection (b), be entitled, in lieu  
 19 of the annuity otherwise provided under the amendments  
 20 made by this title, to—

21 (1) an annuity under subchapter III of chapter  
 22 83, or under chapter 84 (except for subchapters III  
 23 and VII), of title 5, United States Code, as the case  
 24 may be, for creditable service before the date on

1 which service would begin to be credited for pur-  
2 poses of paragraph (2), and

3 (2) an annuity calculated under subsection (b)  
4 or (c) and subsection (g) of section 7443B of the In-  
5 ternal Revenue Code of 1986, as added by this Act,  
6 for any service as a magistrate judge of the United  
7 States Tax Court or special trial judge of the United  
8 States Tax Court but only with respect to service as  
9 such a magistrate judge or special trial judge after  
10 a date not earlier than 9½ years prior to the date  
11 of the enactment of this Act (as specified in the elec-  
12 tion pursuant to subsection (b)) for which deduc-  
13 tions and deposits are made under subsections (j)  
14 and (k) of such section 7443B, as applicable, with-  
15 out regard to the minimum number of years of serv-  
16 ice as such a magistrate judge of the United States  
17 Tax Court, except that—

18 (A) in the case of a magistrate judge who  
19 retired with less than 8 years of service, the an-  
20 nuity under subsection (c) of such section  
21 7443B shall be equal to that proportion of the  
22 salary being received at the time the magistrate  
23 judge leaves office which the years of service  
24 bears to 14, subject to a reduction in accord-  
25 ance with subsection (c) of such section 7443B

1 if the magistrate judge is under age 65 at the  
2 time he or she leaves office, and

3 (B) the aggregate amount of the annuity  
4 initially payable on retirement under this sub-  
5 section may not exceed the rate of pay for the  
6 magistrate judge which is in effect on the day  
7 before the retirement becomes effective.

8 (b) FILING OF NOTICE OF ELECTION.—A magistrate  
9 judge of the United States Tax Court shall be entitled to  
10 an annuity under this section only if the magistrate judge  
11 files a notice of that election with the chief judge of the  
12 United States Tax Court specifying the date on which  
13 service would begin to be credited under section 7443B  
14 of the Internal Revenue Code of 1986, as added by this  
15 Act, in lieu of chapter 83 or chapter 84 of title 5, United  
16 States Code. Such notice shall be filed in accordance with  
17 such procedures as the chief judge of the United States  
18 Tax Court shall prescribe.

19 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-  
20 istrate judge of the United States Tax Court who makes  
21 an election under subsection (b) shall be entitled to a  
22 lump-sum credit under section 8342 or 8424 of title 5,  
23 United States Code, as the case may be, for any service  
24 which is covered under section 7443B of the Internal Rev-  
25 enue Code of 1986, as added by this Act, pursuant to that

1 election, and with respect to which any contributions were  
2 made by the magistrate judge under the applicable provi-  
3 sions of title 5, United States Code.

4 (d) RECALL.—With respect to any magistrate judge  
5 of the United States Tax Court receiving an annuity under  
6 this section who is recalled to serve under section 7443C  
7 of the Internal Revenue Code of 1986, as added by this  
8 Act—

9 (1) the amount of compensation which such re-  
10 called magistrate judge receives under such section  
11 7443C shall be calculated on the basis of the annu-  
12 ity received under this section, and

13 (2) such recalled magistrate judge of the United  
14 States Tax Court may serve as a reemployed annu-  
15 itant to the extent otherwise permitted under title 5,  
16 United States Code.

17 Section 7443B(m)(4) of the Internal Revenue Code of  
18 1986, as added by this Act, shall not apply with respect  
19 to service as a reemployed annuitant described in para-  
20 graph (2).

21 **SEC. 1012. PROVISIONS FOR RECALL.**

22 (a) IN GENERAL.—Part I of subchapter C of chapter  
23 76, as amended by this Act, is amended by inserting after  
24 section 7443B the following new section:

1 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**  
2 **COURT.**

3 “(a) RECALLING OF RETIRED MAGISTRATE  
4 JUDGES.—Any individual who has retired pursuant to sec-  
5 tion 7443B or the applicable provisions of title 5, United  
6 States Code, upon reaching the age and service require-  
7 ments established therein, may at or after retirement be  
8 called upon by the chief judge of the Tax Court to perform  
9 such judicial duties with the Tax Court as may be re-  
10 quested of such individual for any period or periods speci-  
11 fied by the chief judge; except that in the case of any such  
12 individual—

13 “(1) the aggregate of such periods in any 1 cal-  
14 endar year shall not (without such individual’s con-  
15 sent) exceed 90 calendar days, and

16 “(2) such individual shall be relieved of per-  
17 forming such duties during any period in which ill-  
18 ness or disability precludes the performance of such  
19 duties.

20 Any act, or failure to act, by an individual performing ju-  
21 dicial duties pursuant to this subsection shall have the  
22 same force and effect as if it were the act (or failure to  
23 act) of a magistrate judge of the Tax Court.

24 “(b) COMPENSATION.—For the year in which a pe-  
25 riod of recall occurs, the magistrate judge shall receive,  
26 in addition to the annuity provided under the provisions

1 of section 7443B or under the applicable provisions of title  
2 5, United States Code, an amount equal to the difference  
3 between that annuity and the current salary of the office  
4 to which the magistrate judge is recalled. The annuity of  
5 the magistrate judge who completes that period of service,  
6 who is not recalled in a subsequent year, and who retired  
7 under section 7443B, shall be equal to the salary in effect  
8 at the end of the year in which the period of recall oc-  
9 curred for the office from which such individual retired.

10 “(c) RULEMAKING AUTHORITY.—The provisions of  
11 this section may be implemented under such rules as may  
12 be promulgated by the Tax Court.”

13 (b) CONFORMING AMENDMENT.—The table of sec-  
14 tions for part I of subchapter C of chapter 76, as amended  
15 by this Act, is amended by inserting after the item relating  
16 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

17 **SEC. 1013. EFFECTIVE DATE.**

18 Except as otherwise provided, the amendments made  
19 by this subtitle shall take effect on the date of the enact-  
20 ment of this Act.

## 1     **Subtitle B—Tax Court Procedure**

### 2     **SEC. 1021. JURISDICTION OF TAX COURT OVER COLLEC-** 3                             **TION DUE PROCESS CASES.**

4             (a) IN GENERAL.—Paragraph (1) of section 6330(d)  
5 (relating to proceeding after hearing) is amended to read  
6 as follows:

7                     “(1) JUDICIAL REVIEW OF DETERMINATION.—  
8             The person may, within 30 days of a determination  
9             under this section, appeal such determination to the  
10            Tax Court (and the Tax Court shall have jurisdic-  
11            tion with respect to such matter).”.

12            (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to determinations made after the  
14 date which is 60 days after the date of the enactment of  
15 this Act.

### 16     **SEC. 1022. AUTHORITY FOR MAGISTRATE JUDGES TO HEAR** 17                             **AND DECIDE CERTAIN EMPLOYMENT STATUS** 18                             **CASES.**

19            (a) IN GENERAL.—Section 7443A(b) (relating to  
20 proceedings which may be assigned to magistrate judges)  
21 is amended by striking “and” at the end of paragraph (4),  
22 by redesignating paragraph (5) as paragraph (6), and by  
23 inserting after paragraph (4) the following new paragraph:

24                     “(5) any proceeding under section 7436(c),  
25            and”.

1 (b) CONFORMING AMENDMENT.—Section 7443A(c)  
2 is amended by striking “or (4)” and inserting “(4), or  
3 (5)”.

4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to any proceeding under section  
6 7436(c) of the Internal Revenue Code of 1986 with re-  
7 spect to which a decision has not become final (as deter-  
8 mined under section 7481 of such Code) before the date  
9 of the enactment of this Act.

10 **SEC. 1023. CONFIRMATION OF AUTHORITY OF TAX COURT**

11 **TO APPLY DOCTRINE OF EQUITABLE**  
12 **RECOUPMENT.**

13 (a) CONFIRMATION OF AUTHORITY OF TAX COURT  
14 TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—  
15 Section 6214(b) (relating to jurisdiction over other years  
16 and quarters) is amended by adding at the end the fol-  
17 lowing new sentence: “Notwithstanding the preceding sen-  
18 tence, the Tax Court may apply the doctrine of equitable  
19 recoupment to the same extent that it is available in civil  
20 tax cases before the district courts of the United States  
21 and the United States Court of Federal Claims.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this section shall apply to any action or proceeding in the  
24 United States Tax Court with respect to which a decision  
25 has not become final (as determined under section 7481

1 of the Internal Revenue Code of 1986) as of the date of  
2 the enactment of this Act.

3 **SEC. 1024. TAX COURT FILING FEE IN ALL CASES COM-**  
4 **MENCED BY FILING PETITION.**

5 (a) IN GENERAL.—Section 7451 (relating to fee for  
6 filing a Tax Court petition) is amended by striking all that  
7 follows “petition” and inserting a period.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall take effect on the date of the enactment  
10 of this Act.

11 **SEC. 1025. AMENDMENTS TO APPOINT EMPLOYEES.**

12 (a) IN GENERAL.—Subsection (a) of section 7471  
13 (relating to Tax Court employees) is amended to read as  
14 follows:

15 “(a) APPOINTMENT AND COMPENSATION.—

16 “(1) CLERK.—The Tax Court may appoint a  
17 clerk without regard to the provisions of title 5,  
18 United States Code, governing appointments in the  
19 competitive service. The clerk shall serve at the  
20 pleasure of the Tax Court.

21 “(2) LAW CLERKS AND SECRETARIES.—

22 “(A) IN GENERAL.—The judges and spe-  
23 cial trial judges of the Tax Court may appoint  
24 law clerks and secretaries, in such numbers as  
25 the Tax Court may approve, without regard to

1 the provisions of title 5, United States Code,  
2 governing appointments in the competitive serv-  
3 ice. Any such law clerk or secretary shall serve  
4 at the pleasure of the appointing judge.

5 “(B) EXEMPTION FROM FEDERAL LEAVE  
6 PROVISIONS.—A law clerk appointed under this  
7 subsection shall be exempt from the provisions  
8 of subchapter I of chapter 63 of title 5, United  
9 States Code. Any unused sick leave or annual  
10 leave standing to the employee’s credit as of the  
11 effective date of this subsection shall remain  
12 credited to the employee and shall be available  
13 to the employee upon separation from the Fed-  
14 eral Government.

15 “(3) OTHER EMPLOYEES.—The Tax Court may  
16 appoint necessary employees without regard to the  
17 provisions of title 5, United States Code, governing  
18 appointments in the competitive service. Such em-  
19 ployees shall be subject to removal by the Tax  
20 Court.

21 “(4) PAY.—The Tax Court may fix and adjust  
22 the compensation for the clerk and other employees  
23 of the Tax Court without regard to the provisions of  
24 chapter 51, subchapter III of chapter 53, or section  
25 5373 of title 5, United States Code. To the max-

1       imum extent feasible, the Tax Court shall com-  
2       pensate employees at rates consistent with those for  
3       employees holding comparable positions in the judi-  
4       cial branch.

5           “(5) PROGRAMS.—The Tax Court may establish  
6       programs for employee evaluations, incentive awards,  
7       flexible work schedules, premium pay, and resolution  
8       of employee grievances.

9           “(6) DISCRIMINATION PROHIBITED.—The Tax  
10      Court shall—

11           “(A) prohibit discrimination on the basis  
12      of race, color, religion, age, sex, national origin,  
13      political affiliation, marital status, or handi-  
14      capping condition; and

15           “(B) promulgate procedures for resolving  
16      complaints of discrimination by employees and  
17      applicants for employment.

18           “(7) EXPERTS AND CONSULTANTS.—The Tax  
19      Court may procure the services of experts and con-  
20      sultants under section 3109 of title 5, United States  
21      Code.

22           “(8) RIGHTS TO CERTAIN APPEALS RE-  
23      SERVED.—Notwithstanding any other provision of  
24      law, an individual who is an employee of the Tax  
25      Court on the day before the effective date of this

1 subsection and who, as of that day, was entitled  
2 to—

3 “(A) appeal a reduction in grade or re-  
4 moval to the Merit Systems Protection Board  
5 under chapter 43 of title 5, United States Code,

6 “(B) appeal an adverse action to the Merit  
7 Systems Protection Board under chapter 75 of  
8 title 5, United States Code,

9 “(C) appeal a prohibited personnel practice  
10 described under section 2302(b) of title 5,  
11 United States Code, to the Merit Systems Pro-  
12 tection Board under chapter 77 of that title,

13 “(D) make an allegation of a prohibited  
14 personnel practice described under section  
15 2302(b) of title 5, United States Code, with the  
16 Office of Special Counsel under chapter 12 of  
17 that title for action in accordance with that  
18 chapter, or

19 “(E) file an appeal with the Equal Em-  
20 ployment Opportunity Commission under part  
21 1614 of title 29 of the Code of Federal Regula-  
22 tions,

23 shall be entitled to file such appeal or make such an  
24 allegation so long as the individual remains an em-  
25 ployee of the Tax Court.

1           “(9) COMPETITIVE STATUS.—Notwithstanding  
2 any other provision of law, any employee of the Tax  
3 Court who has completed at least 1 year of contin-  
4 uous service under a non-temporary appointment  
5 with the Tax Court acquires a competitive status for  
6 appointment to any position in the competitive serv-  
7 ice for which the employee possesses the required  
8 qualifications.

9           “(10) MERIT SYSTEM PRINCIPLES; PROHIBITED  
10 PERSONNEL PRACTICES; AND PREFERENCE ELIGI-  
11 BLES.—Any personnel management system of the  
12 Tax Court shall—

13                   “(A) include the principles set forth in sec-  
14 tion 2301(b) of title 5, United States Code;

15                   “(B) prohibit personnel practices prohib-  
16 ited under section 2302(b) of title 5, United  
17 States Code; and

18                   “(C) in the case of any individual who  
19 would be a preference eligible in the executive  
20 branch, the Tax Court will provide preference  
21 for that individual in a manner and to an ex-  
22 tent consistent with preference accorded to  
23 preference eligibles in the executive branch.”.

24           (b) EFFECTIVE DATE.—The amendments made by  
25 this section shall take effect on the date the United States

1 Tax Court adopts a personnel management system after  
2 the date of the enactment of this Act.

3 **SEC. 1026. EXPANDED USE OF TAX COURT PRACTICE FEE**  
4 **FOR PRO SE TAXPAYERS.**

5 (a) IN GENERAL.—Section 7475(b) (relating to use  
6 of fees) is amended by inserting before the period at the  
7 end “and to provide services to pro se taxpayers”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall take effect on the date of the enactment  
10 of this Act.

11 **TITLE XI—OTHER PROVISIONS**

12 **SEC. 1101. TRANSFER OF EXCESS FUNDS FROM BLACK**  
13 **LUNG DISABILITY TRUSTS TO UNITED MINE**  
14 **WORKERS OF AMERICA COMBINED BENEFIT**  
15 **FUND.**

16 (a) IN GENERAL.—So much of section 501(c)(21)(C)  
17 of the Internal Revenue Code of 1986 (relating to black  
18 lung disability trusts) as precedes the last sentence is  
19 amended to read as follows:

20 “(C) Payments described in subparagraph  
21 (A)(i)(IV) may be made from such trust during  
22 a taxable year only to the extent that the aggre-  
23 gate amount of such payments during such tax-  
24 able year does not exceed the excess (if any), as  
25 of the close of the preceding taxable year, of—

1           “(i) the fair market value of the as-  
2           sets of the trust, over

3           “(ii) 110 percent of the present value  
4           of the liability described in subparagraph  
5           (A)(i)(I) of such person.”

6           (b) TRANSFER.—Section 9705 of such Code (relating  
7 to transfer) is amended by adding at the end the following  
8 new subsection:

9           “(c) TRANSFER FROM BLACK LUNG DISABILITY  
10 TRUSTS.—

11           “(1) IN GENERAL.—The Secretary shall trans-  
12 fer each fiscal year to the Fund from the general  
13 fund of the Treasury an amount which the Secretary  
14 estimates to be the additional amounts received in  
15 the Treasury for that fiscal year by reason of the  
16 amendment made by section 1101(a) of the National  
17 Employee Savings and Trust Equity Guarantee Act  
18 of 2005. The Secretary shall adjust the amount  
19 transferred for any year to the extent necessary to  
20 correct errors in any estimate for any prior year.

21           “(2) USE OF FUNDS.—Any amount transferred  
22 to the Combined Fund under paragraph (1) shall be  
23 used to proportionately reduce the unassigned bene-  
24 ficiary premium under section 9704(a)(3) of each

1 assigned operator for any plan year beginning after  
2 December 31, 2002.”

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2002.

6 **SEC. 1102. TREATMENT OF DEATH BENEFITS FROM COR-**  
7 **PORATE-OWNED LIFE INSURANCE.**

8 (a) IN GENERAL.—Section 101 of the Internal Rev-  
9 enue Code of 1986 (relating to certain death benefits) is  
10 amended by adding at the end the following new sub-  
11 section:

12 “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED  
13 LIFE INSURANCE CONTRACTS.—

14 “(1) GENERAL RULE.—In the case of an em-  
15 ployer-owned life insurance contract, the amount ex-  
16 cluded from gross income of an applicable policy-  
17 holder by reason of paragraph (1) of subsection (a)  
18 shall not exceed an amount equal to the sum of the  
19 premiums and other amounts paid by the policy-  
20 holder for the contract.

21 “(2) EXCEPTIONS.—In the case of an employer-  
22 owned life insurance contract with respect to which  
23 the notice and consent requirements of paragraph  
24 (4) are met, paragraph (1) shall not apply to any of  
25 the following:

1           “(A) EXCEPTIONS BASED ON INSURED’S  
2 STATUS.—Any amount received by reason of  
3 the death of an insured who, with respect to an  
4 applicable policyholder—

5                   “(i) was an employee at any time dur-  
6 ing the 12-month period before the in-  
7 sured’s death, or

8                   “(ii) is, at the time the contract is  
9 issued—

10                           “(I) a director,

11                           “(II) a highly compensated em-  
12 ployee within the meaning of section  
13 414(q) (without regard to paragraph  
14 (1)(B)(ii) thereof), or

15                           “(III) a highly compensated indi-  
16 vidual within the meaning of section  
17 105(h)(5), except that ‘35 percent’  
18 shall be substituted for ‘25 percent’ in  
19 subparagraph (C) thereof.

20           “(B) EXCEPTION FOR AMOUNTS PAID TO  
21 INSURED’S HEIRS.—Any amount received by  
22 reason of the death of an insured to the ex-  
23 tent—

24                   “(i) the amount is paid to a member  
25 of the family (within the meaning of sec-

1           tion 267(c)(4)) of the insured, any indi-  
 2           vidual who is the designated beneficiary of  
 3           the insured under the contract (other than  
 4           the applicable policyholder), a trust estab-  
 5           lished for the benefit of any such member  
 6           of the family or designated beneficiary, or  
 7           the estate of the insured, or

8           “(ii) the amount is used to purchase  
 9           an equity (or capital or profits) interest in  
 10          the applicable policyholder from any person  
 11          described in clause (i).

12          “(3) EMPLOYER-OWNED LIFE INSURANCE CON-  
 13          TRACT.—

14          “(A) IN GENERAL.—For purposes of this  
 15          subsection, the term ‘employer-owned life insur-  
 16          ance contract’ means a life insurance contract  
 17          which—

18                 “(i) is owned by a person engaged in  
 19                 a trade or business and under which such  
 20                 person (or a related person described in  
 21                 subparagraph (B)(ii)) is directly or indi-  
 22                 rectly a beneficiary under the contract, and

23                 “(ii) covers the life of an insured who  
 24                 is an employee with respect to the trade or

1           business of the applicable policyholder on  
2           the date the contract is issued.

3           For purposes of the preceding sentence, if cov-  
4           erage for each insured under a master contract  
5           is treated as a separate contract for purposes of  
6           sections 817(h), 7702, and 7702A, coverage for  
7           each such insured shall be treated as a separate  
8           contract.

9           “(B) APPLICABLE POLICYHOLDER.—For  
10          purposes of this subsection—

11           “(i) IN GENERAL.—The term ‘applica-  
12          ble policyholder’ means, with respect to  
13          any employer-owned life insurance con-  
14          tract, the person described in subpara-  
15          graph (A)(i) which owns the contract.

16           “(ii) RELATED PERSONS.—The term  
17          ‘applicable policyholder’ includes any per-  
18          son which—

19           “(I) bears a relationship to the  
20          person described in clause (i) which is  
21          specified in section 267(b) or  
22          707(b)(1), or

23           “(II) is engaged in trades or  
24          businesses with such person which are  
25          under common control (within the

1 meaning of subsection (a) or (b) of  
2 section 52).

3 “(4) NOTICE AND CONSENT REQUIREMENTS.—

4 The notice and consent requirements of this para-  
5 graph are met if, before the issuance of the contract,  
6 the employee—

7 “(A) is notified in writing that the applica-  
8 ble policyholder intends to insure the employee’s  
9 life and the maximum face amount for which  
10 the employee could be insured at the time the  
11 contract was issued,

12 “(B) provides written consent to being in-  
13 sured under the contract and that such cov-  
14 erage may continue after the insured terminates  
15 employment, and

16 “(C) is informed in writing that an appli-  
17 cable policyholder will be a beneficiary of any  
18 proceeds payable upon the death of the em-  
19 ployee.

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

22 “(A) EMPLOYEE.—The term ‘employee’ in-  
23 cludes an officer, director, and highly com-  
24 pensated employee (within the meaning of sec-  
25 tion 414(q)).



1           “(3) the total amount of insurance in force at  
2 the end of the year under such contracts,

3           “(4) the name, address, and taxpayer identifica-  
4 tion number of the applicable policyholder and the  
5 type of business in which the policyholder is en-  
6 gaged, and

7           “(5) that the applicable policyholder has a valid  
8 consent for each insured employee (or, if all such  
9 consents are not obtained, the number of insured  
10 employees for whom such consent was not obtained).

11          “(b) RECORDKEEPING REQUIREMENT.—Each appli-  
12 cable policyholder owning 1 or more employer-owned life  
13 insurance contracts during any year shall keep such  
14 records as may be necessary for purposes of determining  
15 whether the requirements of this section and section  
16 101(j) are met.

17          “(c) DEFINITIONS.—Any term used in this section  
18 which is used in section 101(j) shall have the same mean-  
19 ing given such term by section 101(j).”.

20          “(c) CONFORMING AMENDMENTS.—

21                (1) Paragraph (1) of section 101(a) of the In-  
22 ternal Revenue Code of 1986 is amended by striking  
23 “and subsection (f)” and inserting “subsection (f),  
24 and subsection (j)”.

1           (2) The table of sections for subpart A of part  
2           III of subchapter A of chapter 61 of such Code is  
3           amended by inserting after the item relating to sec-  
4           tion 6039H the following new item:

          “Sec. 6039I. Returns and records with respect to employer-owned life insurance  
          contracts.”.

5           (d) EFFECTIVE DATE.—The amendments made by  
6           this section shall apply to life insurance contracts issued  
7           after the date of the enactment of this Act, except for a  
8           contract issued after such date pursuant to an exchange  
9           described in section 1035 of the Internal Revenue Code  
10          of 1986 for a contract issued on or prior to that date.  
11          For purposes of the preceding sentence, any material in-  
12          crease in the death benefit or other material change shall  
13          cause the contract to be treated as a new contract except  
14          that, in the case of a master contract (within the meaning  
15          of section 264(f)(4)(E) of such Code), the addition of cov-  
16          ered lives shall be treated as a new contract only with re-  
17          spect to such additional covered lives.

Calendar No. 276

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

**S. 1953**

[Report No. 109-174]

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## **A BILL**

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension benefits are funded and that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

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NOVEMBER 2, 2005

Read twice and placed on the calendar