Mr. HASTINGS of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will now resume on the question of adopting House Resolution 602, which was previously postponed.

## PROVIDING FOR CONSIDERATION OF H.R. 2830, PENSION PROTECTION ACT OF 2005

The SPEAKER pro tempore. The pending business is the vote on adoption of House Resolution 602 on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

The vote was taken by electronic device, and there were—yeas 226, nays 199, not voting 8, as follows:

[Roll No. 633]

YEAS—226

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Cuellar
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Osborne
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—199

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—8

Berkley
Boucher
Davis (FL)
Diaz-Balart, M.
Fitzpatrick (PA)
Fossella
Hyde
McHugh

□ 1313

Ms. VELÁZQUEZ and Mr. BARROW changed their vote from ''yea'' to ''nay.''

Messrs. GOHMERT, KIRK, LEACH and JONES of North Carolina changed their vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1315

## PENSION PROTECTION ACT OF 2005

Mr. BOEHNER. Madam Speaker, pursuant to House Resolution 602, I call up the bill (H.R. 2830) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mrs. CAPITO). Pursuant to House Resolution 602, the bill is considered read.

The text of the bill is as follows:

H.R. 2830

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) SHORT TITLE.—This Act may be cited as the ''Pension Protection Act of 2005''.

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

Sec. 1. Short title and table of contents.

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

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

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

Subtitle C—Other provisions

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

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

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

Sec. 201. Funding rules for multiemployer defined benefit plans.
Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.

Sec. 203. Measures to forestall insolvency of multiemployer plans.
Sec. 204. Withdrawal liability reforms.
Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.
Subtitle B—Amendments to Internal Revenue Code of 1986
Sec. 211. Funding rules for multiemployer defined benefit plans.
Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status.
TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS
Sec. 301. Interest rate assumption for determination of lump sum distributions.
Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.
TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS
Sec. 401. Increases in PBGC premiums.
TITLE V—DISCLOSURE
Sec. 501. Defined benefit plan funding notices.
Sec. 502. Additional disclosure requirements.
Sec. 503. Notice to participants and beneficiaries of section 4010 filings with the PBGC.
TITLE VI—INVESTMENT ADVICE
Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.
Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice.
TITLE VII—DEDUCTION LIMITATIONS
Sec. 701. Increase in deduction limits.
Sec. 702. Updating deduction rules for combination of plans.

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

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

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

(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 through 306 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1085a) are repealed.

(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of subtitle B of title I of such Act (as amended by subsection (a)) is amended further by inserting after section 301 the following new section:

''MINIMUM FUNDING STANDARDS

''SEC. 302. (a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

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

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 303 for the plan for the plan year,

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

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 304 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 303(i)) shall be paid by any employer responsible for making contributions to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

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

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraphs (B) and (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

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

''(i) in the case of a single-employer plan, the minimum required contribution under section 303 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 303(j), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 304(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 304(b)(2)(C).

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any waived portion of the minimum funding standard for any preceding plan year.

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4)) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

''(I) the shortfall amortization charge (within the meaning of section 303(c)(1)) for the plan year, and

''(II) the aggregate total of shortfall amortization installments determined for succeeding plan years under section 303(c)(2),

is less than $1,000,000.

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

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan

year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

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

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by the affected plan, and each affected party (as defined in section 4001(a)(21)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(7) CROSS REFERENCE.—For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412(c) of such Code.

''(d) MISCELLANEOUS RULES.—

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

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 304(d)) is unavailable or inadequate.

''(3) CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.''.

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

''Sec. 302. Minimum funding standards.''.

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

**SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 101 of this Act) is amended further by inserting after section 302 the following new section.

''MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

''SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—

''(1) IN GENERAL.—For purposes of section 302(a)(2)(A), except as otherwise provided in this subsection, the minimum required contribution with respect to a plan for a plan year is the target normal cost of the plan for the plan year.

''(2) SHORTFALL AMORTIZATION CHARGE.—In any case in which the value of plan assets (determined without regard to subsection (e)(1)) of the plan for the plan year which are held by the plan immediately before the valuation date is less than the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the sum of the amount determined under paragraph (1) plus a shortfall amortization charge for such plan year determined under subsection (c).

''(3) CREDIT FOR EXCESS ASSETS.—In any case in which the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date exceed the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the amount determined under paragraph (1), reduced by such excess.

''(4) PRE-FUNDING BALANCE.—In the case of any plan year in which—

''(A) the ratio (expressed as a percentage) which—

''(i) the value of plan assets (determined without regard to subsection (e)(1)(B)) for the preceding plan year, bears to

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (g)(1)),

is at least 80 percent, and

''(B) the plan sponsor elects (in such form and manner as shall be prescribed in regulations of the Secretary of the Treasury) to credit against the minimum required contribution for the current plan year all or a portion of the funding standard carryover balance and the pre-funding balance (to the extent provided in subsection (h)) for the preceding plan year (not in excess of such minimum required contribution),

the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor.

''(b) TARGET NORMAL COST.—For purposes of this section, subject to subsection (g)(2), the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. If any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—

''(A) IN GENERAL.—For purposes of paragraph (1), the plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base.

''(B) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under subparagraph (A) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for such plan year.

''(3) SHORTFALL AMORTIZATION BASE.—The shortfall amortization base of a plan for a plan year is the excess (if any) of—

''(A) the funding shortfall of such plan for such plan year, over

''(B) the present value (determined using the effective interest rate of the plan for the plan year) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year.

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

''(A) the funding target of the plan for the plan year, over

''(B) the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date.

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization base for all preceding plan years shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (g)(1), the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year, bears to

''(B) the funding target of the plan for the plan year (determined without regard to subsection (g)(1)).

''(e) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) VALUE OF PLAN ASSETS.—For purposes of this section (other than paragraph (4) and subsections (a)(2) and (h)(3)), the term 'value of plan assets' means the excess of the value of plan assets (determined without regard to this paragraph) over the sum of—

''(A) the pre-funding balance of the plan maintained under subsection (h)(1), and

''(B) the funding standard carryover balance of the plan maintained under subsection (h)(2).

''(2) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

''(3) VALUATION DATE.—For purposes of this section—

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

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(4) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets (determined without regard to paragraph (1)) shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the current plan year and the 2 preceding plan years, and

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

''(5) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2006 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the preceding plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

''(6) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued during such plan year (after those taken into account under subparagraph (A)) shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(f) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1) would result in an amount equal to the funding target of the plan for such plan year.

''(B) APPLICATION TO FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an averaging methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which made and all succeeding plan years unless revoked with the consent of the Secretary of the Treasury.

''(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 205(g)(3)(B)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, and third segment rates for a plan with respect to any month shall be equal to the sum of—

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2005), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2006 and 66⅔ percent for plan years beginning in 2007.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—The mortality tables used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, as published by the Society of American Actuaries, as in effect on the date of the enactment of the Pension Protection Act of

2005 and as revised from time to time under subparagraph (B).

''(B) PERIODIC REVISION.—The Secretary of the Treasury shall (at least every 10 years) make revisions in any tables in effect under this paragraph to reflect the actual experience of pension plans and projected trends in such experience.

''(C) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2005) shall be phased in ratably over the first period of 5 plan years beginning in or after 2006 so as to be fully effective for the fifth plan year.

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

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a single-employer plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

''(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

''(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

''(g) SPECIAL RULES FOR AT-RISK PLANS.—

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

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

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (f), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (f), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

''(i) the present value of all benefits which are expected to accrue under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(ii) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(B) MINIMUM AMOUNT.—In no event shall the target normal cost of a plan determined under this paragraph be less than the target normal cost of such plan as determined without regard to this paragraph.

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COST.—

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

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(h) PRE-FUNDING AND FUNDING STANDARD CARRYOVER BALANCES.—

''(1) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan which is a single-employer plan shall maintain a pre-funding balance for purposes of this subsection. Such balance shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (3).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2006, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

''(C) DECREASES.—As of the valuation date for each plan year after 2006, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the pre-funding balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(D) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero—

''(i) no amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution, and

''(ii) no election may be made under subparagraph (C)(ii).

''(E) NO USE OF BALANCE TO REDUCE MINIMUM REQUIRED CONTRIBUTION IF USED TO AVOID SHORTFALL AMORTIZATION.—The amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution only if the plan sponsor has elected to apply subsection (a)(2) to the plan for such plan year by substituting 'subsection (e)(1)(B)' for 'subsection (e)(1)'.

''(2) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan to which this paragraph applies shall maintain a funding standard carryover balance for purposes of this subsection. Such balance shall consist of a beginning balance determined under subparagraph (C), decreased to the extent provided in subparagraph (D), and adjusted further as provided in paragraph (3).

''(B) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph applies to any plan which—

''(i) is a single-employer plan subject to this part,

''(ii) was in effect for a plan year beginning in 2005, and

''(iii) had a positive balance in the funding standard account under section 302(b) as in effect for such plan year and determined as of the end of such plan year.

''(C) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in subparagraph (B)(iii).

''(D) DECREASES.—As of the valuation date for each plan year after 2006, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the funding standard carryover balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(3) ADJUSTMENTS.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date of the plan (before applying any increase or decrease under paragraph (1) or (2)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary of the Treasury, adjust such balance of the plan so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (e)(4), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation

date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(4) ELECTIONS.—Except as otherwise provided in this subsection, any election made under this subsection shall be made at such time and in such form and manner as the Secretary of the Treasury may provide.

''(5) COORDINATION WITH WAIVERS.—For purposes of this subsection, the term 'minimum required contribution' means for any plan year the minimum required contribution for such plan year determined without regard to this subsection and by taking into account any waiver under section 302(c) and any waiver amortization charge under subsection (j) for such plan year.

''(i) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

''(2) INTEREST.—Any payment required under paragraph (1) for a plan year made after the valuation date for such plan year shall be increased by interest, for the period from the valuation date to the payment date, at the effective rate of interest for the plan for such plan year.

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

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

''(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), over

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

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

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2006, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

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

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (e)(3)(B) if '100' were substituted for '500' therein) which—

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

''(ii) has a liquidity shortfall for any quarter during such plan year.

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

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

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

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

''(j) WAIVER AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The minimum required contribution for any plan year under subsection (a) shall be increased by the amount of the waiver amortization charge (if any) for such plan year.

''(2) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for such plan year and each of the 4 preceding plan years.

''(3) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (2), the plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(4) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under paragraph (2) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for the preceding plan year.

''(5) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the excess (if any) of—

''(A) the portion of the minimum required contribution of such plan waived under section 302(c) for such plan year, over

''(B) the aggregate total of the waiver amortization installments, for such plan year and the 3 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 4 plan years preceding such plan year.

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—In the case of a plan covered under section 4021 of this Act and to which this subsection applies (as provided under paragraph (2)), if—

''(A) any person fails to make a contribution payment required by section 302 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

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

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

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 302 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

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

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (i), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 303.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

**SEC. 103. LIMITATIONS ON DISTRIBUTIONS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

''(g) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

''(1) IN GENERAL.—No pension plan which is a single-employer plan may provide benefits which are payable upon the occurrence of—

''(A) a plant shutdown, or

''(B) any other unpredictable contingent event.

''(2) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term 'unpredictable contingent event' means an event other than—

''(A) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(B) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

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

''(h) FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.—

''(1) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

''(A) IN GENERAL.—No amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(i) less than 80 percent, or

''(ii) would be less than 80 percent taking into account such amendment.

''(B) EXEMPTION.—Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution equal to—

''(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the amendment, and

''(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(2) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e)).

''(3) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(4) NEW PLANS.—Paragraphs (1) and (3) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this paragraph, the reference in this paragraph to a plan shall include a reference to any predecessor plan.

''(5) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(A) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under paragraph (1), (2), or (3) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(B) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such paragraphs, to be the valuation date of the plan for the current plan year.

''(C) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

''(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to

10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(6) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under paragraph (2) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of paragraph (5).

''(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this subsection, the term 'funding target attainment percentage' has the meaning provided such term under section 303(d)(2).''.

(2) NOTICE REQUIREMENT.—

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

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

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

''(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restriction described in section 206(h)(2) or at such other time as may be deterimined by the Secretary.''.

(B) PENALTY.—Section 502(c)(1)(A) of such Act (29 U.S.C. 1132(c)(1)(A)) is amended by striking ''section 606'' and all that follows through ''101(f)'' and inserting ''section 606, 101(e)(1), 101(f), or 101(j)''.

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

(d) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

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

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

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009

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

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

(a) SECURITY REQUIRED FOR PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.—Section 307 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085b) is amended—

(1) in subsection (a)(1), by striking ''current liability under the plan'' and inserting ''the funding target of the plan'';

(2) in subsection (a)(2), by striking ''funded current liability percentage'' and inserting ''funding target attainment percentage'', and by striking ''unfunded current liability'' and inserting ''unfunded liabilities'';

(3) in subsection (c)(1)(A), by striking ''funded current liability percentage'' and inserting ''funding target attainment percentage'', and by ''unfunded current liability'' and inserting ''unfunded liabilities'';

(4) in subsection (c)(1)(B), by striking ''current liability'' and inserting ''funding target'';

(5) in subsection (d), by striking ''funded current liability percentage'' each place it appears and inserting ''funding target attainment percentage''; and

(6) in subsection (f), by striking ''the terms'' and all that follows and inserting the following: ''the terms 'funding target' and 'funding target attainment percentage' shall have the meanings given such terms by sections 303(d) and 303(g)(4), respectively, and the term 'unfunded liabilities' means, with respect to any plan year, the excess (if any) of the funding target of the plan over the value of the plan's assets determined under section 303(e)(4).''

(b) MISCELLANEOUS AMENDMENTS.—Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.) is amended—

(1) in section 101(d)(3), by striking ''section 302(e)'' and inserting ''section 303(i)'';

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

''(i) a statement as to whether—

''(I) in the case of a single-employer plan, the plan's funding target attainment percentage (as defined in section 303(g)(4)), or

''(II) in the case of a multiemployer plan, the plan's funded current liability percentage (as defined in section 305(e)(4)),

is at least 100 percent (and, if note, the actual percentage);'';

(3) in section 103(d)(8)(B), by striking ''the requirements of section 302(c)(3)'' and inserting ''the applicable requirements of sections 303(f) and 304(c)(3)'';

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

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

''(A) in the case of a single-employer plan, the funding target (as defined in section 303(d)) of the plan, or

''(B) in the case of a multiemployer plan, the current liability (as defined in section 304(c)(6)(C)) under the plan,

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

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

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

(7) in section 204(i)(2)(B), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(8) in section 204(i)(3), by striking ''funded current liability percentage (within the meaning of section 302(d)(8) of this Act)'' and inserting ''funding target attainment percentage (as defined in section 303(g)(4))'';

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

(10) in section 206(e)(1), by striking ''subject to the additional funding requirements of section 302(d)'' and inserting ''in at-risk status under section 303(g)'', and by striking ''section 302(e)(5)'' and inserting ''section 303(i)(4)(E)(i)'';

(11) in section 206(e)(3), by striking ''section 302(e) by reason of paragraph (5)(A) thereof'' and inserting ''section 303(i)(3) by reason of section 303(i)(4)(A)''; and

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

(c) REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY VARIANCES.—Section 207 of such Act (29 U.S.C. 1057) is repealed.

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

## Subtitle B—Amendments to Internal Revenue Code of 1986

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

(a) IN GENERAL.—Section 412 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

**''SEC. 412. MINIMUM FUNDING STANDARDS.**

''(a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

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

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

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

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(i)) shall be paid by any employer responsible for making contributions to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

''(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or

under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer), and

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraphs (B) and (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

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

''(i) in the case of a single-employer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(j), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any waived portion of the minimum funding standard for any preceding plan year.

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement and Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of such Act), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement and Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

''(I) the shortfall amortization charge (within the meaning of section 303(c)(1)) for the plan year, and

''(II) the aggregate total of shortfall amortization installments determined for succeeding plan years under section 303(c)(2),

is less than $1,000,000.

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

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

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

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

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

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

''(A) IN GENERAL.—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by the affected plan, and participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(d) MISCELLANEOUS RULES.—

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

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

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

''(4) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this paragraph if—

''(A) the plan is funded exclusively by the purchase of individual insurance contracts,

''(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

''(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

''(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

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

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

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.''.

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

**SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

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

**''PART III—MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS**

**''SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

''(a) MINIMUM REQUIRED CONTRIBUTION.—

''(1) IN GENERAL.—For purposes of section 412(a)(2)(A), except as otherwise provided in this subsection, the minimum required contribution with respect to a plan for a plan year is the target normal cost of the plan for the plan year.

''(2) SHORTFALL AMORTIZATION CHARGE.—In any case in which the value of plan assets (determined without regard to subsection (e)(1)) of the plan for the plan year which are held by the plan immediately before the valuation date is less than the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the sum of the amount determined under paragraph (1) plus a shortfall amortization charge for such plan year determined under subsection (c).

''(3) CREDIT FOR EXCESS ASSETS.—In any case in which the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date exceed the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the amount determined under paragraph (1), reduced by such excess.

''(4) PRE-FUNDING BALANCE.—In the case of any plan year in which—

''(A) the ratio (expressed as a percentage) which—

''(i) the value of plan assets (determined without regard to subsection (e)(1)(B)) for the preceding plan year, bears to

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (g)(1)),

is at least 80 percent, and

''(B) the plan sponsor elects (in such form and manner as shall be prescribed in regulations of the Secretary) to credit against the minimum required contribution for the current plan year all or a portion of the funding standard carryover balance and the pre-funding balance (to the extent provided in subsection (h)) for the preceding plan year (not in excess of such minimum required contribution),

the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor.

''(b) TARGET NORMAL COST.—For purposes of this section, subject to subsection (g)(2), the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. If any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—

''(A) IN GENERAL.—For purposes of paragraph (1), the plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base.

''(B) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under subparagraph (A) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for such plan year.

''(3) SHORTFALL AMORTIZATION BASE.—The shortfall amortization base of a plan for a plan year is the excess (if any) of—

''(A) the funding shortfall of such plan for such plan year, over

''(B) the present value (determined using the effective interest rate of the plan for the plan year) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year.

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

''(A) the funding target of the plan for the plan year, over

''(B) the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date.

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization base for all preceding plan years shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (g)(1), the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year, bears to

''(B) the funding target of the plan for the plan year (determined without regard to subsection (g)(1)).

''(e) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) VALUE OF PLAN ASSETS.—For purposes of this section (other than paragraph (4) and subsections (a)(2) and (h)(3)), the term 'value of plan assets' means the excess of the value of plan assets (determined without regard to this paragraph) over the sum of—

''(A) the pre-funding balance of the plan maintained under subsection (h)(1), and

''(B) the funding standard carryover balance of the plan maintained under subsection (h)(2).

''(2) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

''(3) VALUATION DATE.—For purposes of this section—

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

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(4) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets (determined without regard to paragraph (1)) shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the current plan year and the 2 preceding plan years, and

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

''(5) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2006 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the preceding plan year for the period beginning when such payment was

made and ending on the valuation date of the plan.

''(6) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued during such plan year (after those taken into account under subparagraph (A)) shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(f) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1) would result in an amount equal to the funding target of the plan for such plan year.

''(B) APPLICATION TO FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an averaging methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which made and all succeeding plan years unless revoked with the consent of the Secretary.

''(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(A)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, and third segment rates for a plan with respect to any month shall be equal to the sum of—

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2005), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2006 and 66⅔ percent for plan years beginning in 2007.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—The mortality tables used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, as published by the Society of American Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B).

''(B) PERIODIC REVISION.—The Secretary shall (at least every 10 years) make revisions in any tables in effect under this paragraph to reflect the actual experience of pension plans and projected trends in such experience.

''(C) TRANSITION RULE.—Under regulations of the Secretary, any difference in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 412(d)(7)(C)(ii) (as in effect for plan years beginning in 2005) shall be phased in ratably over the first period of 5 plan years beginning in or after 2006 so as to be fully effective for the fifth plan year.

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

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a single-employer plan to which this paragraph applies may be changed without the approval of the Secretary.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

''(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement and Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

''(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

''(g) SPECIAL RULES FOR AT-RISK PLANS.—

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

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

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (f), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (f), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

''(i) the present value of all benefits which are expected to accrue under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(ii) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(B) MINIMUM AMOUNT.—In no event shall the target normal cost of a plan determined under this paragraph be less than the target normal cost of such plan as determined without regard to this paragraph.

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COST.—

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

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(h) PRE-FUNDING AND FUNDING STANDARD CARRYOVER BALANCES.—

''(1) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan which is a single-employer plan shall maintain a pre-funding balance for purposes of this subsection. Such balance shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (3).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2006, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

''(C) DECREASES.—As of the valuation date for each plan year after 2006, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the pre-funding balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(D) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero—

''(i) no amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution, and

''(ii) no election may be made under subparagraph (C)(ii).

''(E) NO USE OF BALANCE TO REDUCE MINIMUM REQUIRED CONTRIBUTION IF USED TO AVOID SHORTFALL AMORTIZATION.—The amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution only if the plan sponsor has elected to apply subsection (a)(2) to the plan for such plan year by substituting 'subsection (e)(1)(B)' for 'subsection (e)(1)'.

''(2) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan to which this paragraph applies shall maintain a funding standard carryover balance for purposes of this subsection. Such balance shall consist of a beginning balance determined under subparagraph (C), decreased to the extent provided in subparagraph (D), and adjusted further as provided in paragraph (3).

''(B) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph applies to any plan which—

''(i) is a single-employer plan subject to this part,

''(ii) was in effect for a plan year beginning in 2005, and

''(iii) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

''(C) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in subparagraph (B)(iii).

''(D) DECREASES.—As of the valuation date for each plan year after 2006, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the funding standard carryover balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(3) ADJUSTMENTS.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date of the plan (before applying any increase or decrease under paragraph (1) or (2)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary, adjust such balance of the plan so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (e)(4), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(4) ELECTIONS.—Except as otherwise provided in this subsection, any election made under this subsection shall be made at such time and in such form and manner as the Secretary may provide.

''(5) COORDINATION WITH WAIVERS.—For purposes of this subsection, the term 'minimum required contribution' means for any plan year the minimum required contribution for such plan year determined without regard to this subsection and by taking into account any waiver under section 412(c) and any waiver amortization charge under subsection (j) for such plan year.

''(i) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

''(2) INTEREST.—Any payment required under paragraph (1) for a plan year made after the valuation date for such plan year shall be increased by interest, for the period from the valuation date to the payment date, at the effective rate of interest for the plan for such plan year.

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

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

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

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

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

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2006, 100 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

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

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (e)(3)(B) if '100' were substituted for '500' therein) which—

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

''(ii) has a liquidity shortfall for any quarter during such plan year.

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

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

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

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

''(j) WAIVER AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The minimum required contribution for any plan year under subsection (a) shall be increased by the amount of the waiver amortization charge (if any) for such plan year.

''(2) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for such plan year and each of the 4 preceding plan years.

''(3) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (2), the plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(4) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under paragraph (2) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for the preceding plan year.

''(5) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the excess (if any) of—

''(A) the portion of the minimum required contribution of such plan waived under section 412(c) for such plan year, over

''(B) the aggregate total of the waiver amortization installments, for such plan year and the 3 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 4 plan years preceding such plan year.

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—In the case of a plan covered under section 4021 of the Employee Retirement and Income Security Act of 1974 and to which this subsection applies (as provided under paragraph (2)), if—

''(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

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

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

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

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

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (i), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified

transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

**SEC. 113. LIMITATIONS ON DISTRIBUTIONS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

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

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

**''PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS**

''Subpart A. Minimum funding standards for pension plans.

''Subpart B. Benefit limitations under single-employer plans.

**''Subpart A—Minimum Funding Standards for Pension Plans**

''Sec. 430. Minimum funding standards for single-employer defined benefit pension plans.'',

and

(2) by adding at the end the following new subpart:

**''Subpart B—Benefit Limitations Under Single-employer Plans**

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

**''SEC. 436. PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS.**

''(a) IN GENERAL.—No pension plan which is a single-employer plan may provide benefits which are payable upon the occurrence of—

''(1) a plant shutdown, or

''(2) any other unpredictable contingent event.

''(b) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term 'unpredictable contingent event' means an event other than—

''(1) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(2) an event which is reasonably and reliably predictable (as determined by the Secretary).''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

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

**''SEC. 437. BENEFIT LIMIATIONS ON UNDERFUNDED PLANS.**

''(a) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

''(1) IN GENERAL.—No amendment to a defined benefit plan (other than a multiemployer plan) which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(A) less than 80 percent, or

''(B) would be less than 80 percent taking into account such amendment.

''(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution equal to—

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

''(B) in the case of subparagraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(b) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e) of the Employee Retirement and Income Security Act of 1974).

''(c) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(d) NEW PLANS.—Subsections (a) and (c) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(e) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(1) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under subsections (a), (b), or (c) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(2) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of subsections (a), (b), and (c), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such paragraphs, to be the valuation date of the plan for the current plan year.

''(3) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(A) a benefit limitation under subsections (a), (b), or (c) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

''(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(f) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under subsection (b) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under subsection (c) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of subsection (e).

''(g) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this section, the term 'funding target attainment percentage' has the meaning provided such term under section 430(d)(2).''.

(2) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by adding at the end the following new item:

''Sec. 437. Benefit limitations on underfunded plans.''.

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

(d) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

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

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

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009.

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

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

(a) AMENDMENTS RELATED TO QUALIFICATION REQUIREMENTS.—

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

''(29) BENEFIT LIMITATIONS ON PLANS IN AT-RISK STATUS.—In the case of a defined benefit

plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of sections 436 and 437.''.

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

(A) in subparagraph (A), by striking ''412(m)(5)'' each place it appears and inserting ''section 430(i)(4)'', and

(B) in subparagraph (C), by striking ''section 412(m)'' and inserting ''section 430(i)''.

(3) Section 401(a) is amended by striking paragraph (33) and by redesignating paragraph (34) as paragraph (33).

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

(1) by striking ''section 412(c)(8)'' in subsection (a)(3)(C) and inserting ''section 412(d)(2)'',

(2) in subsection (b)(1)(F)—

(A) by striking ''paragraphs (2) and (3) of section 412(i)'' in clause (ii) and inserting ''subparagraphs (B) and (C) of section 412(d)(4)'', and

(B) by striking ''paragraphs (4), (5), and (6) of section 412(i)'' and inserting ''subparagraphs (D), (E), and (F) of section 412(d)(4)'', and

(3) by striking ''section 412(c)(8)'' in subsection (d)(6)(A) and inserting ''section 412(e)(3)''.

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

''(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the target liability amount and target normal cost determined under section 430 in the case of any other plan), over''.

(d) TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.—

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

''(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

''(A) the lesser of—

''(i) the fair market value of the plan's assets (reduced by the pre-funding balance and the funding standard carryover balance, as determined under section 430(e)(1)), or

''(ii) the value of plan assets as determined under section 430(e)(4) after reduction under section 430(e)(1), over

''(B) 125 percent of the sum of the target liability amount and the target normal cost determined under section 430 for such plan year.''.

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

''(4) COORDINATION WITH SECTION 430.—In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(e) EXCISE TAXES.—

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

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

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

''(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

''(b) ADDITIONAL TAX.—If—

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

''(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

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

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

(A) by striking ''the last two sentences of section 412(a)'' in paragraph (1) and inserting ''section 431'', and

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

''(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(i)(1)) for the plan year.

''(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.''.

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

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

(A) by striking ''section 412(m)(5)'' and inserting ''section 430(i)(4)'', and

(B) by striking ''section 412(m)'' and inserting ''section 430(i)''.

(5) Section 4972(c)(7) of such Code is amended by striking ''except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)'' and inserting ''except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))''.

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

(1) by striking ''the accumulated funding deficiency (as defined in section 412(a))'' in paragraph (2) and inserting ''the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431,'', and

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

''(B) the requirements for reasonable actuarial assumptions under section 430(f)(1) or 431(c)(3), whichever are applicable, have been complied with.''.

### Subtitle C—Other Provisions

#### SEC. 121. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

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

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

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

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

the rules described in subsection (b) shall apply for any plan year beginning after 2005.

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

(1) For purposes of section 430(i)(3) of the Internal Revenue Code of 1986 and section 303(i)(3) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

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

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act,

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

(c) CONFORMING AMENDMENT.—

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

(2) The amendment made this subsection shall apply to plan years beginning after 2005.

#### SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) EMPLOYER'S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—In the case of a plan to which section 412 applies, if—

''(A) during any period in which any defined benefit plan of an employer is in an at-risk status (as defined in section 412(g)(3)), assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer, or

''(B) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors.''.

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

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

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

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

#### SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 102) is amended further by inserting after section 303 the following new section:

''MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

''SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

''(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of this section), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of this section).

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

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

''(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of this section), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2006.—In the case of any amount amortized under section 302(b) (as in effect before the date of the enactment of Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2006, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

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

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

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

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

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

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

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

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

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

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

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

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

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of this section) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

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

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which

are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

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

''(B) all amounts described in subparagraphs (B), (C), and (D) of paragraph (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

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

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (D).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(D) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(5) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(E) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

''(7) ANNUAL VALUATION.—

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

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

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

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) AUTOMATIC EXTENSION.—The Secretary of the Treasury shall, upon application and subject to the requirements of paragraph (4), extend the period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of the plan for a period of time not in excess of 5 years.

''(2) EXTENSION FOR CAUSE.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) INTEREST RATE.—The interest rate applicable for any plan year under any arrangement entered into by the Secretary of the Treasury in connection with an extension granted under this subsection shall be the greater of—

''(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

''(B) the rate of interest used under the plan for determining costs.

''(4) REQUIRED NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by the affected plan and to the Pension Benefit Guaranty Corporation.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

''(e) RESTRICTION ON PLAN AMENDMENTS.—

''(1) IN GENERAL.—No amendment of a multiemployer plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 302(c) or an extension of time under subsection (d) is in effect with respect to the plan, or if a plan amendment described in section 302(d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

''(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(B) only repeals an amendment described in section 302(d)(2), or

''(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by section 102 of this Act) is amended further by inserting after the item relating to section 303 the following new item:

''Sec. 304. Minimum funding standards for multiemployer plans.''.

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

**SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended further by inserting after section 304 the following new section:

''ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

''SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary of shall certify to the Secretary of the Treasury whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as set forth in the actuarial statement prepared for the preceding plan year under section 103(d).

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) employer and employee contributions projected for the current and succeeding plan years under the terms of such collective bargaining agreements (assuming the continued application of such terms indefinitely to such plan years), but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

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

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status for a plan year under paragraph (1), is presumed to be in critical status under paragraph (3), or is deemed to be in critical status under subsection (b)(7), the plan sponsor shall, not later than 30 days after the date of the certification, presumption, or deeming, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

''(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (c)—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year under section 304 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) REDUCTION IN UNFUNDED CURRENT LIABILITY.—A percentage decrease in the plan's unfunded current liability from the amount for the first plan year of the funding improvement period to the amount for the last plan year of the funding improvement period, of at least 33⅓ percent.

''(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

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

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

''(A) RESTRICTIONS ON LUMP SUM DISTRIBUTIONS AND SIMILAR DISTRIBUTIONS.—The multiemployer plan may not be amended so as to provide additional forms of benefits.

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which—

''(I) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(II) only repeals an amendment described in section 302(d)(2), or

''(III) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986.

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (a)(1), the plan shall be in critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in critical status under subsection (a)(1) or is presumed to be in critical status under subsection (a)(3), or the first day of the plan year in the case of a plan that is deemed to be in critical status under subsection (b)(7).

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

''(A) the plan is in endangered status for the plan year and the requirements of subsection (b)(1) are not met with respect to the plan for such plan year, or

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

Any multiemployer plan which is in critical status under subparagraph (A) or (B) for a plan year shall be treated as in critical status also for the succeeding plan year.

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

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, taking into account any extension of amortization periods under section 304(e).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years.

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

''(ii) the plan is projected to have an accumulated funding deficiency during either of the following 3 plan years.

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and

consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status,

''(ii) measures, agreed to by the bargaining parties, to provide funding relief, or

''(iii) reasonable measures to forestall possible insolvency (within the meaning of section 4245) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this section is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of the certification under subsection (a) that the plan is in critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law and the rate of future benefit accruals did not exceed 1 percent per plan year.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the joint request of all bargaining parties, each of whom—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) DEFAULT SCHEDULE.—In any case in which the bargaining parties, as of 240 days after the later of the date of the certification under subsection (a) or the first day the plan is in critical status under subsection (a)(3) or (b)(7), have not agreed to at least one of the proposed schedules, the plan sponsor shall amend the plan to implement the schedule required by subparagraph (A)(ii).

''(D) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(E) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (6) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 or a partial withdrawal by the employer under section 4205.

''(d) DEFINITIONS.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) CURRENT LIABILITY.—The term 'current liability' has the meaning provided such term in section 304(c)(6)(C).

''(3) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means the excess (if any) of—

''(A) the current liability of the plan, over

''(B) the value of the plan's assets determined under section 304(c)(2).

''(4) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(5) UNFUNDED VESTED BENEFITS.—The term 'unfunded vested benefits' has the meaning provided in section 4241(b)(9).

''(6) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 304(a).

''(7) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(8) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(9) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

''(10) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a).''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended further by inserting after the item relating to section 304 the following new item:

''Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2005.

**SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after 2005.

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

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY IN THE EVENT OF CERTAIN SALES OF EMPLOYER ASSETS TO UNRELATED PARTIES.—

(1) IN GENERAL.—Section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 4225.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) REPEAL OF LIMITATION TO 20 ANNUAL PAYMENTS.—

(1) IN GENERAL.—Section 4219(c)(1) of such Act (29 U.S.C. 1399(c)(1)) is amended by striking subparagraph (B).

(2) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to withdrawals occurring on or after January 1, 2006.

(c) PARTIAL WITHDRAWALS BY MEANS OF OUTSOURCING.—

(1) IN GENERAL.—Section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended—

(A) by striking ''or'' at the end of clause (i);

(B) by striking ''ceased.'' at the end of clause (ii) and inserting ''ceased, or''; and

(C) by adding at the end the following new clause:

''(iii) an employer continues to perform work of the type for which contributions are made under the plan by means of services of individuals who are not employees of such employer covered by such plan.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work performed on or after January 1, 2006.

(d) REPEAL OF SPECIAL RULE FOR LONG AND SHORT HAUL TRUCKING INDUSTRY.—

(1) IN GENERAL.—Subsection (d) of section 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to cessations to have obligations to contribute to multiemployer plans and cessations of covered operations under such plans occurring on or after January 1, 2006.

(e) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

**SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO PROCEDURES APPLICABLE TO DISPUTES INVOLVING WITHDRAWAL LIABILITY.**

(a) IN GENERAL.—Section 4221(f)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(f)(1)) is amended—

(1) in subparagraph (A) by inserting ''and'' after ''plan,'', and

(2) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

''(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of any transaction which occurred at least 5 years (2 years in the case of a small employer) before the date of the complete or partial withdrawal was to evade or avoid withdrawal liability under this subtitle,''.

(b) SMALL EMPLOYER.—Paragraph (2) of section 4221(f) of such Act is amended by adding at the end the following new subparagraph:

''(C) SMALL EMPLOYER.—For purposes of paragraph (1)(B)—

''(i) IN GENERAL.—The term 'small employer' means any employer who (as of immediately before the transaction referred to in paragraph (1)(B)) employs not more than 250 employees.

''(ii) CONTROLLED GROUP.—Any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subparagraph.''.

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 4221(f)(2) of such Act is amended by striking ''Notwithstanding'' and inserting ''In the case of a transaction occurring before January 1, 1999, and at least 5 years before the date of the complete or partial withdrawal, notwithstanding''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 on or after the date of the enactment of this Act.

## Subtitle B—Amendments to Internal Revenue Code of 1986

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

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

**''SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

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

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 418B.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

''(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

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

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of this section), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of this section).

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

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

''(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of this section), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2006.—In the case of any amount amortized under section 412(b) (as in effect before the date of the enactment of Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2006, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

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

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

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

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

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such

date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

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

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

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

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of the Employee Retirement Income Security Act of 1974 or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of this section) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

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

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

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

''(B) all amounts described in subparagraphs (B), (C), and (D) of paragraph (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

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

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (D).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities

occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(D) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(5) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(E) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

''(7) ANNUAL VALUATION.—

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

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

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

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) AUTOMATIC EXTENSION.—The Secretary shall, upon application and subject to the requirements of paragraph (4), extend the period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of the plan for a period of time not in excess of 5 years.

''(2) EXTENSION FOR CAUSE.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary for a period of time (not in excess of 5 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) INTEREST RATE.—The interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of—

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

''(B) the rate of interest used under the plan for determining costs.

''(4) REQUIRED NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by the affected plan and to the Pension Benefit Guaranty Corporation.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

''(e) RESTRICTION ON PLAN AMENDMENTS.—

''(1) IN GENERAL.—No amendment of a multiemployer plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 412(c) or an extension of time under subsection (d) is in effect with respect to the plan, or if a plan amendment described in section 412(d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

''(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(B) only repeals an amendment described in section 412(d)(2), or

''(C) is required as a condition of qualification under part I of subchapter D, of chapter 1.''.

(b) CONFORMING AMENDMENTS.—

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

(A) by striking ''section 412(b)(2)'' in subparagraph (A) and inserting ''section 431(b)(2)'', and

(B) by striking ''section 412(b)(3)(B)'' in subparagraph (B) and inserting ''section 431(b)(3)(B)''.

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

(A) by striking ''section 412(b)(2)(A) or (B)'' in subsection (d)(1)(B) and inserting ''section 431(b)(2)(A) or (B)'',

(B) by striking ''section 412(c)(8)'' in subsection (e) and inserting ''section 412(g)(2)'', and

(C) by striking ''section 412(c)(3)'' in subsection (g) and inserting ''section 431(c)(3)''.

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

(A) by striking ''section 412(c)(8)'' and inserting ''section 412(g)(2)'', and

(B) by striking ''section 412(c)(10)'' and inserting ''section 431(c)(8)''.

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

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

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

**SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 431 the following new section:

**''SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

''(a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary of shall certify to the Secretary whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as set forth in the actuarial statement prepared for the preceding plan year under section 6058.

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and

succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) employer and employee contributions projected for the current and succeeding plan years under the terms of such collective bargaining agreements (assuming the continued application of such terms indefinitely to such plan years), but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

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

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status for a plan year under paragraph (1), is presumed to be in critical status under paragraph (3), or is deemed to be in critical status under subsection (b)(7), the plan sponsor shall, not later than 30 days after the date of the certification, presumption, or deeming, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

''(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (c)—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

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

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) REDUCTION IN UNFUNDED CURRENT LIABILITY.—A percentage decrease in the plan's unfunded current liability from the amount for the first plan year of the funding improvement period to the amount for the last plan year of the funding improvement period, of at least 33⅓ percent.

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

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement and Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

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

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

''(A) RESTRICTIONS ON LUMP SUM DISTRIBUTIONS AND SIMILAR DISTRIBUTIONS.—The multiemployer plan may not be amended so as to provide additional forms of benefits.

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which—

''(I) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(II) only repeals an amendment described in section 430(d)(2), or

''(III) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A.

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (a)(1), the plan shall be in critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in critical status under subsection (a)(1) or is presumed to be in critical status under subsection (a)(3), or the first day of the plan year in the case of a plan that is deemed to be in critical status under subsection (b)(7).

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

''(A) the plan is in endangered status for the plan year and the requirements of subsection (b)(1) are not met with respect to the plan for such plan year, or

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

Any multiemployer plan which is in critical status under subparagraph (A) or (B) for a plan year shall be treated as in critical status also for the succeeding plan year.

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

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years.

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

''(ii) the plan is projected to have an accumulated funding deficiency during either of the following 3 plan years.

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status,

''(ii) measures, agreed to by the bargaining parties, to provide funding relief, or

''(iii) reasonable measures to forestall possible insolvency (within the meaning of section 418E) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this section is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3) of the Employee Retirement and Income Security Act of 1974.

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of the certification under subsection (a) that the plan is in critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law and the rate of future benefit accruals did not exceed 1 percent per plan year.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the joint request of all bargaining parties, each of whom—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) DEFAULT SCHEDULE.—In any case in which the bargaining parties, as of 240 days after the later of the date of the certification under subsection (a) or the first day the plan is in critical status under subsection (a)(3) or (b)(7), have not agreed to at least one of the proposed schedules, the plan sponsor shall amend the plan to implement the schedule required by subparagraph (A)(ii).

''(D) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(E) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (6) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement and Income Security Act of 1974 or a partial withdrawal by the employer under section 4205 of such Act.

''(d) DEFINITIONS.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) CURRENT LIABILITY.—The term 'current liability' has the meaning provided such term in section 431(c)(6)(C).

''(3) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means the excess (if any) of—

''(A) the current liability of the plan, over

''(B) the value of the plan's assets determined under section 431(c)(2).

''(4) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(5) UNFUNDED VESTED BENEFITS.—The term 'unfunded vested benefits' has the meaning provided in section 418(b)(7).

''(6) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 431(a).

''(7) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(8) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(9) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

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

''(10) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a).''.

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

''Sec. 432. Additional funding rules for multiemployer plans in endangered status or critical status.''.

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

## TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS

### SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subparagraph (B) of section 205(g)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to read as follows:

''(B) For purposes of subparagraph (A)—

''(i) The term 'applicable mortality table' means the mortality table specified for the plan year under section 303(f)(3).

''(ii) The term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(f)(2)(B).

''(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(f)(2)(C) if—

''(I) section 303(f)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields', and

''(II) the applicable percentage under section 303(f)(2)(G) were determined in accordance with the following table:

| "In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2006 | 20 percent |
| 2007 | 40 percent |
| 2008 | 60 percent |
| 2009 | 80 percent.''. |

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—Section 417(e)(3)(A) of the Internal Revenue Code of 1986 is amended by striking clause (ii) and inserting the following:

''(ii) APPLICABLE MORTALITY TABLE.—For purposes of clause (i), the term 'applicable mortality table' means the mortality table specified for the plan under section 430(f)(3).

''(iii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(f)(2)(B).

''(iv) ADJUSTED FIRST, SECOND, AND THIRD SEGMENT RATES.—For purposes of clause (iii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(f)(2)(C) if—

''(I) section 430(f)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields', and

''(II) the applicable percentage under section 430(f)(2)(G) were determined in accordance with the following table:

| "In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2006 | 20 percent |
| 2007 | 40 percent |
| 2008 | 60 percent |
| 2009 | 80 percent.''. |

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

### SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.

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

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

''(I) 5.5 percent,

''(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

''(III) the rate specified under the plan.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions made in years beginning after 2005.

## TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

### SEC. 401. INCREASES IN PBGC PREMIUMS.

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

(1) by striking clause (i) of subparagraph (A) and inserting the following:

''(i) in the case of a single-employer plan—

''(I) for plan years beginning after December 31, 1990, and before January 1, 2008, an amount equal to the sum of $19, and

''(II) for plan years beginning after December 31, 2007, an amount determined under subparagraph (F),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;''; and

(2) by adding at the end the following new subparagraph:

''(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of $30 or the adjusted amount determined under clause (ii).

''(ii) The adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year before the calendar year in which the plan year begins, to

''(II) the national average wage index (as so defined) for 2006,

with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.

''(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2007 and before 2012—

''(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

| "If the plan year begins in: | The amount is: |
|---|---|
| 2008 | $21.20 |
| 2009 | $23.40 |
| 2010 | $25.60 |
| 2011 | $27.80; or |

''(II) if the plan's funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

| "If the plan year begins in: | The amount is: |
|---|---|
| 2008 | $22.67 |
| 2009 | $26.33 |
| 2010 or 2011 | the amount provided under clause (i) |

''(iv) For purposes of this subparagraph, the term 'funding target attainment percentage' has the meaning provided such term in section 303(d)(2).''.

(b) RISK-BASED PREMIUMS.—

(1) IN GENERAL.—Section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended—

(A) in clause (ii), by striking ''$9.00'' and inserting ''the greater of $9.00 or the adjusted amount determined under clause (iii)'';

(B) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(C) by inserting after clause (ii) the following new clause:

''(iii) The adjusted amount determined under this clause is the product derived by multiplying $9.00 by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year before the calendar year in which the plan year begins, to

''(II) the national average wage index (as so defined) for 2006,

with such product, if not a multiple of $1.00, being rounded to the next higher multiple of $1.00 where such product is a multiple of $0.50 but not of $1.00, and to the nearest multiple of $1.00 in any other case.''.

(2) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act (as amended by paragraph (1)) is amended further—

(A) by striking clause (iv) and inserting the following:

''(iv)(I) For purposes of clause (ii), except as provided in subclause (II) or (III), the term

'unfunded benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and determined without regard to section 303(e)(1), and only vested benefits were taken into account.

''(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(f)(2)(C) if section 303(f)(2)(D)(i) were applied by substituting 'the yields' for 'the 3-year weighted average of yields', as applicable under rules similar to the rules under section 303(f)(2)(B).''; and

(B) by striking clause (iv).

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to premiums for plan years after 2007.

(B) The amendments made by paragraph (2) shall apply with respect to plan years beginning after 2005.

## TITLE V—DISCLOSURE

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

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

(1) in the heading, by striking ''MULTIEMPLOYER'';

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

(3) in paragraph (2)(B)(iii), by inserting after ''plan'' the following: '', and a summary of the rules governing termination of single-employer plans under subtitle C of title IV''.

(b) INCLUSION OF STATEMENT OF THE RATIO OF INACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) is amended—

(1) in clause (iii)(II) (added by subsection (a)(3) of this section), by striking ''and'' at the end;

(2) in clause (iv), by striking ''apply.'' and inserting ''apply; and''; and

(3) by adding at the end the following new clause:

''(v) a statement of the ratio, as of the end of the plan year to which the notice relates, of—

''(I) the number of participants who are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

''(II) the number of participants who are in covered service under the plan.''.

(c) COMPARISON OF MONTHLY AVERAGE OF VALUE OF PLAN ASSETS TO PROJECTED CURRENT LIABILITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) (as amended by the preceding provisions of this section) is amended further—

(1) by striking clause (ii) and inserting the following:

''(ii) a statement of a reasonable estimate of—

''(I) the value of the plan's assets for the plan year to which the notice relates,

''(II) projected liabilities of the plan for the plan year to which the notice relates, and

''(III) the ratio of the estimated amount determined under subclause (I) to the estimated amount determined under subclause (II);''; and

(2) by adding at the end (after and below clause (v)) the following:

''For purposes of determining a plan's projected liabilities for a plan year under clause (ii)(II), such projected liabilities shall be determined by projecting forward in a reasonable manner to the end of the plan year the liabilities of the plan to participants and beneficiaries as of the first day of the plan year, taking into account any significant events that occur during the plan year and that have a material effect on such liabilities, including any plan amendments in effect for the plan year.''.

(d) STATEMENT OF PLAN'S FUNDING POLICY AND METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

(1) in clause (iv), by striking ''and'' at the end;

(2) in clause (v), by striking the period and inserting ''; and''; and

(3) by inserting after clause (v) the following new clause:

''(vi) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates.''.

(e) NOTICE OF FUNDING IMPROVEMENT PLAN OR REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER PLAN.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

(1) in clause (v), by striking ''and'' at the end;

(2) in clause (vi), by striking the period and inserting ''; and''; and

(3) by inserting after clause (vi) the following new clause:

''(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates.''.

(f) NOTICE PROVIDED TO ALTERNATE PAYEES.—Section 101(f)(1) of such Act (29 U.S.C. 1021(f)(1)) is amended by adding at the end the following new sentence: ''For purposes of this paragraph, the term 'beneficiary' includes an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)) receiving benefits under the plan.''.

(g) NOTICE DUE 90 DAYS AFTER PLAN'S VALUATION DATE.—Section 101(f)(3) of such Act (29 U.S.C. 1021(f)(3)) is amended by striking ''two months after the deadline (including extensions) for filing the annual report for the plan year'' and inserting ''90 days after the end of the plan year''.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

### SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.

(a) ADDITIONAL ANNUAL REPORTING REQUIREMENTS.—Section 103 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—

(1) in subsection (a)(1)(B), by striking ''subsections (d) and (e)'' and inserting ''subsections (d), (e), and (f)''; and

(2) by adding at the end the following new subsection:

''(f)(1) With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

''(A)(i) The ratio of the number of inactive participants under the plan as of the end of such plan year to the number of active participants as of the end of such plan year.

''(ii) For purposes of clause (i)—

''(I) the term 'active participant' means an individual who is in covered service under the plan, and

''(II) the term 'inactive participant' means an individual who is not in covered service under the plan who is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(B) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries borne by 2 or more pension plans as of immediately before such plan year, the funded ratio of each of such 2 or more pension plans as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

''(C) For purposes of this paragraph, the term 'funded ratio' means, in connection with a plan, the percentage which—

''(i) the value of the plan's assets is of

''(ii) the liabilities to participants and beneficiaries under the plan.

''(2) With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include the following:

''(A) The number of employers obligated to contribute to the plan as of the end of such plan year.

''(B) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.''.

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting after paragraph (11) the following new paragraph:

''(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and asset distributions under the plan.''.

(c) SUMMARY ANNUAL REPORT FILED WITHIN 15 DAYS AFTER DEADLINE FOR FILING OF ANNUAL REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended—

(1) by striking ''Within 210 days after the close of the fiscal year,'' and inserting ''Within 15 business days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan''; and

(2) by striking ''the latest'' and inserting ''such''.

(d) INFORMATION MADE AVAILABLE TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(A) by redesignating subsection (j) as subsection (k); and

(B) by inserting after subsection (i) the following new subsection:

''(j) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

''(1) IN GENERAL.—Each administrator of a multiemployer plan shall furnish to any plan participant or beneficiary or any employer having an obligation to contribute to the plan, who so requests in writing—

''(A) a copy of any actuary report received by the plan for any plan year which has been in receipt by the plan for at least 30 days, and

''(B) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary which has been in receipt by the plan for at least 30 days.

''(2) COMPLIANCE.—Information required to be provided under paragraph (1) —

''(A) shall be provided to the requesting participant, beneficiary, or employer within

30 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by inserting ''or 101(j)'' after ''101(f)(1)''.

(3) REGULATIONS.—The Secretary shall prescribe regulations under section 101(j)(2) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1) of this subsection) not later than 90 days after the date of the enactment of this Act.

(e) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (e) of this section) is amended further—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

''(k) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

''(1) IN GENERAL.—The plan sponsor or administrator shall furnish to any employer who has an obligation to contribute under the plan and who so requests in writing notice of—

''(A) the amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

''(B) the average increase, per participant under the plan, in accrued liabilities under the plan as of the end of such plan year to participants under such plan on whose behalf no employer contributions are payable (or their beneficiaries), which would be attributable to such a withdrawal by such employer.

For purposes of subparagraph (B), the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

''(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

''(A) shall be provided to the requesting employer within 180 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 503. NOTICE TO PARTICIPANTS AND BENEFICIARIES OF SECTION 4010 FILINGS WITH THE PBGC.**

(a) IN GENERAL.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

''(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

''(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

''(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

''(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and

''(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

''(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

''(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) VALUE OF PLAN ASSETS.—The term 'value of plan assets' means the value of plan assets, as determined under section 303(a)(2).

''(B) FUNDING TARGET.—The term 'funding target' has the meaning provided under section 303(d)(1).

''(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'funding target attainment percentage' has the meaning provided in section 303(d)(2).

''(D) AGGREGATE FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'aggregate funding targets attainment percentage' with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

''(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

''(E) AT-RISK STATUS.—The term 'at-risk status' has the meaning provided in section 303(h)(3).

''(3) COMPLIANCE.—

''(A) IN GENERAL.—Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.

''(B) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

## TITLE VI—INVESTMENT ADVICE

**SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(b) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may

consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

''(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

''(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2006.

**SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(1) in paragraph (14), by striking ''or'' at the end;

(2) in paragraph (15), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following new paragraph:

''(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.''.

(b) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit

associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2006.

## TITLE VII—DEDUCTION LIMITATIONS

### SEC. 701. INCREASE IN DEDUCTION LIMITS.

(a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan'' after ''section 501(a),'', and

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

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

''(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

''(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

''(A) the greater of—

''(i) the sum of—

''(I) 150 percent of the funding target applicable to the plan for such plan year, determined under section 430(e), plus

''(II) the target normal cost applicable to the plan for such plan year, determined under section 430(b), or

''(ii) in the case of a plan that is not in an at-risk status (as determined under 430(g)), the sum of—

''(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(e) (with regard to section 430(g)), plus

''(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(b) (with regard to section 430(g)), over

''(B) the value of the plan assets (determined under section 430(e) as of the valuation date of the plan).

''(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

''(4) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.''.

(b) INCREASE IN DEDUCTION LIMIT FOR MULTIEMPLOYER PLANS.—Section 404(a)(1)(D) of such Code is amended to read as follows:

''(D) AMOUNT DETERMINED ON BASIS OF UNFUNDED CURRENT LIABILITY.—

''(i) IN GENERAL.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability of the plan.

''(ii) UNFUNDED CURRENT LIABILITY.—For purposes of clause (i), the term 'unfunded current liability' means the excess (if any) of—

''(I) 140 percent of the current liability of the plan determined under section 431(c)(6)(C), over

''(II) the value of the plan's assets determined under section 431(c)(2).''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

(A) by striking ''In the case of a plan'' and inserting ''In the case of a multiemployer plan'',

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

(C) by striking ''section 412(c)(7)(B)'' and inserting ''section 431(c)(6)(A)(ii)'',

(D) by striking ''section 412(c)(7)(A)'' and inserting ''section 431(c)(6)(A)(i)'', and

(E) by striking ''section 412'' and inserting ''section 431''.

(3) Section 404(a)(1) of such Code is amended by striking subparagraph (F).

(4) Section 404(a)(7) of such Code is amended—

(A) in subparagraph (A)(ii), by striking ''for the plan year'' and all that follows and inserting ''which are multiemployer plans for the plan year which ends with or within such taxable year (or for any prior plan year) and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year.'',

(B) by striking ''section 412(l)'' in the last sentence of subparagraph (A) and inserting ''paragraph (1)(D)(ii)'', and

(C) by striking subparagraph (D) and inserting:

''(D) INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(d)(3) shall be treated as a defined benefit plan.''.

(5) Section 404A(g)(3)(A) of such Code is amended by striking ''paragraphs (3) and (7) of section 412(c)'' and inserting ''sections 430(d)(1) and 431(c) (3) and (6)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after 2005.

**SEC. 702. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.**

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

''(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''.

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

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

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

The SPEAKER pro tempore. In lieu of the amendments recommended by the Committees on Education and the Workforce and Ways and Means printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 109–346 is adopted.

The text of the amendment in the nature of a substitute is as follows:

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) SHORT TITLE.—This Act may be cited as the ''Pension Protection Act of 2005''.

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

Sec. 1. Short title and table of contents.

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

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

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

Subtitle C—Other Provisions

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

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

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

TITLE III—OTHER PROVISIONS

Sec. 301. Interest rate for 2006 funding requirements.
Sec. 302. Interest rate assumption for determination of lump sum distributions.
Sec. 303. Interest rate assumption for applying benefit limitations to lump sum distributions.
Sec. 304. Distributions during working retirement.
Sec. 305. Other amendments relating to prohibited transactions.
Sec. 306. Correction period for certain transactions involving securities and commodities.
Sec. 307. Recovery by reimbursement or subrogation with respect to provided benefits.
Sec. 308. Exercise of control over plan assets in connection with qualified changes in investment options.
Sec. 309. Clarification of fiduciary rules.
Sec. 310. Government Accountability Office pension funding report.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

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

TITLE VI—INVESTMENT ADVICE

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

TITLE VII—BENEFIT ACCRUAL STANDARDS

Sec. 701. Benefit accrual standards.

TITLE VIII—DEDUCTION LIMITATIONS
Sec. 801. Increase in deduction limits.
Sec. 802. Updating deduction rules for combination of plans.
TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED CONTRIBUTION PLANS
Sec. 901. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.
Sec. 902. Saver's credit.
Sec. 903. Increasing participation through automatic contribution arrangements.
Sec. 904. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.
Sec. 905. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
Sec. 906. Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to individual retirement plans.
Sec. 907. Direct payment of tax refunds to individual retirement plans.
Sec. 908. IRA eligibility for the disabled.
Sec. 909. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
TITLE X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY
Sec. 1001. Treatment of annuity and life insurance contracts with a long-term care insurance feature.
Sec. 1002. Disposition of unused health and dependent care benefits in cafeteria plans and flexible spending arrangements.
Sec. 1003. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.
TITLE XI—GENERAL PROVISIONS
Sec. 1101. Provisions relating to plan amendments.

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

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

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

(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 through 308 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1086) are repealed.

(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of subtitle B of title I of such Act (as amended by subsection (a)) is amended further by inserting after section 301 the following new section:

''MINIMUM FUNDING STANDARDS

''SEC. 302. (a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

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

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 303 for the plan for the plan year,

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

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 304 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 303(j)) shall be paid by the employer responsible for making contributions to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

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

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

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

''(i) in the case of a single-employer plan, the minimum required contribution under section 303 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 303(e), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 304(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 304(b)(2)(C).

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

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4)) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

''(I) the aggregate unpaid minimum required contribution for the plan year and all preceding plan years, and

''(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 303(e)(2),

is less than $1,000,000.

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

''(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 303 for the plan year which is not paid on or before the due date (as determined under section 303(j)(1)) for the plan year.

''(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 303 for the plan year.

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

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

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

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

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if such Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to to each affected party (as defined in section 4001(a)(21)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(7) RESTRICTION ON PLAN AMENDMENTS.—

''(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

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

''(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(ii) only repeals an amendment described in subsection (d)(2), or

''(iii) is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

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

''(d) MISCELLANEOUS RULES.—

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

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 304(d)) is unavailable or inadequate.

''(3) CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.''.

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

''Sec. 302. Minimum funding standards.''.

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

**SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

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

''MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

''SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 302(a)(2)(A), except as provided in subsection (f), the term 'minimum required contribution' means, with respect to any plan year of a single-employer plan—

''(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

''(A) the target normal cost of the plan for the plan year,

''(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

''(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

''(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or

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

''(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

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

''(A) the funding shortfall of such plan for such plan year, over

''(B) the sum of—

''(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

''(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

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

''(A) the funding target of the plan for the plan year, over

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

''(5) EXEMPTION FROM NEW SHORTFALL AMORTIZATION BASE.—

''(A) IN GENERAL.—In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

''(B) TRANSITION RULE.—

''(i) IN GENERAL.—In the case of a non-deficit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting, for the funding target of the plan for the plan year, the applicable percentage of such funding target determined under the following table:

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

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

''(I) the value of plan assets for each preceding plan year after 2006 (as reduced under subsection (f)(4)(A)), bears to

''(II) the funding target of the plan for such preceding plan year (determined without regard to subsection (i)(1)),

is not less than the applicable percentage with respect to such preceding plan determined under clause (i).

''(iii) NON-DEFICIT REDUCTION PLAN.—For purposes of clause (i), the term 'non-deficit reduction plan' means any plan—

''(I) to which this part (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2006, and

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

''(6) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

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

''(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

''(e) WAIVER AMORTIZATION CHARGE.—

''(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

''(2) WAIVER AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 302(c).

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

''(f) REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—

''(1) ELECTION TO MAINTAIN BALANCES.—

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

''(B) FUNDING STANDARD CARRYOVER BALANCE.—

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

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

''(I) was in effect for a plan year beginning in 2006, and

''(II) had a positive balance in the funding standard account under section 302(b) as in effect for such plan year and determined as of the end of such plan year.

''(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

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

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

''(C) may be reduced at any time, pursuant to an election under paragraph (5).

''(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 302(c).

''(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

''(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

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

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent.

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

''(A) APPLICABILITY OF SHORTFALL AMORTIZATION BASE.—For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

''(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.

''(ii) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS WITH PBGC.—For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term 'specified balance' means the pre-funding balance or the funding standard carryover balance, as the case may be.

''(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.

''(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in

reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

''(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

''(6) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2007, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

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

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(7) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

''(B) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

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

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(8) ADJUSTMENTS TO BALANCES.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary of the Treasury, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(9) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary of the Treasury.

''(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

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

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

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 36-month period ending with the month which includes the valuation date, and

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

''(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2007 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the current plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

''(5) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

''(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of

such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary of the Treasury.

''(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 205(g)(3)(B)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

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

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

''(iii) NEW PLANS INELIGIBLE.—Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table using Scale AA published by the Society of Actuaries (as in effect on the date of the enactment of the Pension Protection Act of 2005), projected as of the plan's valuation date.

''(B) SUBSTITUTE MORTALITY TABLE.—

''(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary of the Treasury for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

''(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary of the Treasury determines that—

''(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

''(II) such table is significantly different from the table described in subparagraph (A).

''(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary of the Treasury for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless such Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii).

''(C) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in present value resulting from the difference in the assumptions as set forth in the mortality table specified in subparagraph (A) and the assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year. The preceding sentence shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

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

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

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

''(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

''(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

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

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

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

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (h), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

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

''(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(B) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

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

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

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

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

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

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

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

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

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

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

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (f)(2)(B) if '100' were substituted for '500' therein) which—

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

''(ii) has a liquidity shortfall for any quarter during such plan year.

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

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

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

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

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

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

''(A) any person fails to make a contribution payment required by section 302 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

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

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a single-employer plan for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 302 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

''(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with

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

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 303.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

**SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.**

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

''(g) FUNDING-BASED LIMITATION ON SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

''(1) IN GENERAL.—No defined benefit plan which is a single-employer plan may provide benefits to which participants are entitled solely by reason of the occurrence of a plant shutdown or any other unpredictable contingent event occurring during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year—

''(A) is less than 80 percent, or

''(B) would be less than 80 percent taking into account such occurrence.

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

''(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the occurrence referred to in paragraph (1), and

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

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

''(3) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term 'unpredictable contingent event' means an event other than—

''(A) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(B) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

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

''(5) DEEMED REDUCTION OF FUNDING BALANCES.—A rule similar to the rule of subsection (h)(8) shall apply for purposes of this subsection.''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

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

''(h) FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.—

''(1) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

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

''(i) less than 80 percent, or

''(ii) would be less than 80 percent taking into account such amendment.

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

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

''(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the amendment, and

''(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(2) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

''(A) IN GENERAL.—A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e)).

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

''(3) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(4) NEW PLANS.—Paragraphs (1) and (3) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(5) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(A) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under paragraph (1), (2), or (3) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(B) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such subsections, to be the valuation date of the plan for the current plan year.

''(C) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

''(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(6) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under paragraph (2) of a payment described in paragraph (2)(A) or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence

shall not apply to a prohibition or cessation required by reason of paragraph (5).

''(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'funding target attainment percentage' means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

''(i) the value of plan assets for the plan year (as determined under section 303(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 303(f)), bears to

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

''(B) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—

''(i) IN GENERAL.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this subparagraph and without regard to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance), subparagraph (A) shall be applied without regard to such reduction.

''(ii) TRANSITION RULE.—Clause (i) shall be applied to plan years beginning after 2006 and before 2011 by substituting for '100 percent' the applicable percentage determined in accordance with the following table:

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

''(iii) LIMITATION.—Clause (ii) shall not apply with respect to any plan year after 2007 unless the funding target attainment percentage (determined without regard to this subparagraph and without regard to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance) of the plan for each preceding plan year after 2006 was not less than the applicable percentage with respect to such preceding plan year determined under clause (ii).

''(8) DEEMED REDUCTION OF FUNDING BALANCES.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers—

''(A) IN GENERAL.—In any case in which a benefit limitation under paragraph (1), (2), or (3) would (but for this paragraph and determined without regard to paragraph (1)(B)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this Act as having made an election under section 303(f)(5) to reduce the balance of the pre-funding balance and the funding standard carryover balance for the plan year (in a manner consistent with the requirements of section 303(f)(5)(B)) by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

''(B) EXCEPTION FOR INSUFFICIENT FUNDING BALANCES.—Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.''.

(2) NOTICE REQUIREMENT.—

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

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

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

''(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a defined benefit plan which is a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restriction described in section 206(h)(2) or at such other time as may be determined by the Secretary.''.

(B) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking ''section 302(b)(7)(F)(vi)'' and inserting ''sections 101(j) and 302(b)(7)(F)(vi)''.

(c) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

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

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

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009.

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

(d) SPECIAL RULE FOR 2007.—For purposes of applying paragraph (5) of section 206(h) of such Act (as added by this section) to current plan years (within the meaning of such paragraph) beginning in 2007, the modified funded current liability percentage of the plan for the preceding year shall be substituted for the funding target attainment percentage of the plan for the preceding year. For purposes of the preceding sentence, the term ''modified funded current liability percentage'' means the funded current liability percentage (as defined in section 302(l)(8) of such Act), reduced as described in subparagraph (E) thereof in the case of a plan with a funded current liability percentage (as so defined and before such reduction) which is less than 100 percent.

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

(a) MISCELLANEOUS AMENDMENTS TO TITLE I.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021 et seq.) is amended—

(1) in section 101(d)(3), by striking ''section 302(e)'' and inserting ''section 303(j)'';

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

''(i) a statement as to whether—

''(I) in the case of a defined benefit plan which is a single-employer plan, the plan's funding target attainment percentage (as defined in section 303(d)(2)), or

''(II) in the case of a defined benefit plan which is a multiemployer plan, the plan's funded percentage (as defined in section 305(d)(2)),

is at least 100 percent (and, if not, the actual percentage);'';

(3) in section 103(d)(8)(B), by striking ''the requirements of section 302(c)(3)'' and inserting ''the applicable requirements of sections 303(h) and 304(c)(3)'';

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

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

''(A) in the case of a defined benefit plan which is a single-employer plan, the funding target (as defined in section 303(d)(1)) of the plan, or

''(B) in the case of a defined benefit plan which is a multiemployer plan, the current liability (as defined in section 304(c)(6)(D)) under the plan,

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

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

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

(7) in section 204(i)(2)(B), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(8) in section 204(i)(3), by striking ''funded current liability percentage (within the meaning of section 302(d)(8) of this Act)'' and inserting ''funding target attainment percentage (as defined in section 303(d)(2))'';

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

(10) in section 206(e)(1), by striking ''section 302(d)'' and inserting ''section 303(j)(4)'', and by striking ''section 302(e)(5)'' and inserting ''section 303(j)(4)(E)(i)'';

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

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

(b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—Title IV of such Act is amended—

(1) in section 4001(a)(13) (29 U.S.C. 1301(a)(13)), by striking ''302(c)(11)(A)'' and inserting ''302(b)(1)'', by striking ''412(c)(11)(A)'' and inserting ''412(b)(1)'', by striking ''302(c)(11)(B)'' and inserting ''302(b)(2)'', and by striking ''412(c)(11)(B)'' and inserting ''412(b)(2)'';

(2) in section 4003(e)(1) (29 U.S.C. 1303(e)(1)), by striking ''302(f)(1)(A) and (B)'' and inserting ''303(k)(1)(A) and (B)'', and by striking ''412(n)(1)(A) and (B)'' and inserting ''430(k)(1)(A) and (B)'';

(3) in section 4010(b)(2) (29 U.S.C. 1310(b)(2)), by striking ''302(f)(1)(A) and (B)'' and inserting ''303(k)(1)(A) and (B)'', and by striking ''412(n)(1)(A) and (B)'' and inserting ''430(k)(1)(A) and (B)'';

(4) in section 4011(b) (29 U.S.C. 1311(b)), by striking ''to which'' and all that follows and inserting ''for any plan year for which the plan's funding target attainment percentage (as defined in section 303(d)(2)) is at least 90 percent.'';

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

''(1)(A) in the case of a single-employer plan, the sum of the shortfall amortization charge (within the meaning of section 303(c)(1) of this Act and 430(c)(1) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 303(c)(2) of this Act and section 430(c)(2) of such Code (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 302(c) of this Act and section 412(c) of such Code which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year), or

''(B) in the case of a multiemployer plan, the outstanding balance of the accumulated funding deficiencies (within the meaning of section 304(a)(2) of this Act and section 431(a) of the Internal Revenue Code of 1986) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 302(c) of this Act or section 412(c) of such Code and for extensions of the amortization period under section 304(d) of this Act or section 431(d) of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

''(2)(A) in the case of a single-employer plan, the sum of the waiver amortization charge (within the meaning of section 303(e)(1) of this Act and 430(j)(2) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 303(e)(2) of this Act and section 430(j)(3) of such Code, or

''(B) in the case of a multiemployer plan, the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 302(c) of this Act or section 412(c) of such Code (if any), and

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

(6) in section 4071 (29 U.S.C. 1371), by striking ''302(f)(4)'' and inserting ''303(k)(4)'';

(7) in section 4243(a)(1)(B) (29 U.S.C. 1423(a)(1)(B)), by striking ''302(a)'' and inserting ''304(a)'', and, in clause (i), by striking ''302(a)'' and inserting ''304(a)'';

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

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

(10) in section 4243(g) (29 U.S.C. 1423(g)), by striking ''302(c)(3)'' and inserting ''304(c)(3)''.

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

(d) REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY VARIANCES.—

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

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

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

## Subtitle B—Amendments to Internal Revenue Code of 1986

### SEC. 111. MINIMUM FUNDING STANDARDS.

(a) NEW MINIMUM FUNDING STANDARDS.—Section 412 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

### ''SEC. 412. MINIMUM FUNDING STANDARDS.

''(a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

''(1) IN GENERAL.—A plan to which this section applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

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

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j)) shall be paid by the employer responsible for making contributions to or under the plan.

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

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

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

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

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

''(i) in the case of a defined benefit plan which is not a multiemployer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

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

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section and part III of this subchapter, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

''(I) the aggregate unpaid minimum required contribution (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, and

''(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),

is less than $1,000,000.

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

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a defined benefit plan which is not a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

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

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(7) RESTRICTION ON PLAN AMENDMENTS.—

''(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

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

''(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(ii) only repeals an amendment described in subsection (d)(2), or

''(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1.

''(d) MISCELLANEOUS RULES.—

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

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

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

''(e) PLANS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section applies to a plan if, for any plan year beginning after December 31, 2006—

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

''(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

''(2) EXCEPTIONS.—This section shall not apply to—

''(A) any profit-sharing or stock bonus plan,

''(B) any insurance contract plan described in paragraph (3),

''(C) any governmental plan (within the meaning of section 414(d)),

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

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

''(F) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

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

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

''(A) the plan is funded exclusively by the purchase of individual insurance contracts,

''(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

''(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

''(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

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

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

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

**SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

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

**"PART III—MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS**

**"SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

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

''(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

''(A) the target normal cost of the plan for the plan year,

''(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

''(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

''(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or

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

''(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

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

''(A) the funding shortfall of such plan for such plan year, over

''(B) the sum of—

''(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

''(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

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

''(A) the funding target of the plan for the plan year, over

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

''(5) EXEMPTION FROM NEW SHORTFALL AMORTIZATION BASE.—

''(A) IN GENERAL.—In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

''(B) TRANSITION RULE.—

''(i) IN GENERAL.—In the case of a non-deficit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting, for the funding target of the plan for the plan year, the applicable percentage of such funding target determined under the following table:

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

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

''(I) the value of plan assets for each preceding plan year after 2006 (as reduced under subsection (f)(4)(A)), bears to

''(II) the funding target of the plan for such preceding plan year (determined without regard to subsection (i)(1)),

is not less than the applicable percentage with respect to such preceding plan determined under clause (i).

''(iii) NON-DEFICIT REDUCTION PLAN.—For purposes of clause (i), the term 'non-deficit reduction plan' means any plan—

''(I) to which this part (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2006, and

''(II) to which section 412(d) (as so in effect) did not apply for such plan year.

''(6) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

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

''(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

''(e) WAIVER AMORTIZATION CHARGE.—

''(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

''(2) WAIVER AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(c).

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

''(f) REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—

''(1) ELECTION TO MAINTAIN BALANCES.—

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

''(B) FUNDING STANDARD CARRYOVER BALANCE.—

''(i) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

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

''(I) was in effect for a plan year beginning in 2006, and

''(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

''(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

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

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

''(C) may be reduced at any time, pursuant to an election under paragraph (5).

''(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

''(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

''(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

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

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent.

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

''(A) APPLICABILITY OF SHORTFALL AMORTIZATION BASE.—For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

''(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.

''(ii) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS WITH PBGC.—For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term 'specified balance' means the pre-funding balance or the funding standard carryover balance, as the case may be.

''(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.

''(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

''(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

''(6) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2007, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

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

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(7) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

''(B) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

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

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(8) ADJUSTMENTS TO BALANCES.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(9) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

''(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

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

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

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 36-month period ending with the month which includes the valuation date, and

''(B) any such method may not result in a determination of the value of plan assets which, at any time, is lower than 90 percent

or greater than 110 percent of the fair market value of such assets at such time.

''(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2007 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the current plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

''(5) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

''(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

''(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(D)(i) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

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

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

''(iii) NEW PLANS INELIGIBLE.—Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table using Scale AA published by the Society of Actuaries (as in effect on the date of the enactment of the Pension Protection Act of 2005), projected as of the plan's valuation date.

''(B) SUBSTITUTE MORTALITY TABLE.—

''(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

''(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary determines that—

''(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

''(II) such table is significantly different from the table described in subparagraph (A).

''(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii).

''(C) TRANSITION RULE.—Under regulations of the Secretary, any difference in present value resulting from the difference in the assumptions as set forth in the mortality table specified in subparagraph (A) and the assumptions as set forth in the mortality table described in section 412(l)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year. The preceding sentence shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

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

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from

the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

''(i) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

''(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

''(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

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

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

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

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (h), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

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

''(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(B) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

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

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

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

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

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

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

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

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

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

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

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (f)(2)(B) if '100' were substituted for '500' therein) which—

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

''(ii) has a liquidity shortfall for any quarter during such plan year.

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

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

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

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

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

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

''(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

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

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

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

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2006.

**SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.**

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

(1) IN GENERAL.—Part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended—

(A) by striking the heading and inserting the following:

**''PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS**

''Subpart A. Minimum funding standards for pension plans.

''Subpart B. Benefit limitations under single-employer plans.

**''Subpart A—Minimum Funding Standards for Pension Plans**

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

(B) by adding at the end the following new subpart:

**''Subpart B—Benefit Limitations Under Single-employer Plans**

''Sec. 436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.

**''SEC. 436. FUNDING-BASED LIMITATION ON SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.**

''(a) IN GENERAL.—No defined benefit plan (other than a multiemployer plan) may provide benefits to which participants are entitled solely by reason of the occurrence of a plant shutdown or any other unpredictable contingent event occurring during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year—

''(1) is less than 80 percent, or

''(2) would be less than 80 percent taking into account such occurrence.

''(b) EXEMPTION.—Subsection (a) shall cease to apply with respect to any plan year, effective as of the first date of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

''(1) in the case of subsection (a)(1), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the occurrence referred to in subsection (a), and

''(2) in the case of subsection (a)(2), the amount sufficient to result in a funding target attainment percentage of 80 percent.

Rules similar to the rules of section 437(f) shall apply for purposes of this subsection.

''(c) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this section, the term 'unpredictable contingent event' means an event other than—

''(1) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(2) an event which is reasonably and reliably predictable (as determined by the Secretary).

''(d) NEW PLANS.—Subsection (a) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(e) DEEMED REDUCTION OF FUNDING BALANCES.—A rule similar to the rule of section 437(h) shall apply for purposes of this section.''.

(2) CLERICAL AMENDMENT.—The table of parts for suchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''PART III_RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

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

**''SEC. 437. FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

''(a) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

''(1) IN GENERAL.—No amendment to a defined benefit plan (other than a multiemployer plan) which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(A) less than 80 percent, or

''(B) would be less than 80 percent taking into account such amendment.

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

''(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

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

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

''(b) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

''(1) IN GENERAL.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any payment described in section 401(a)(32)(B).

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

''(c) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(d) NEW PLANS.—Subsections (a) and (c) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(e) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(1) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under subsection (a), (b), or (c) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(2) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of subsections (a), (b), and (c), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such subsections, to be the valuation date of the plan for the current plan year.

''(3) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(A) a benefit limitation under subsection (a), (b), or (c) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

''(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(f) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under subsection (b) of a payment described in subsection (b)(1) or a cessation of benefit accruals under subsection (c) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of subsection (e).

''(g) FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(1) IN GENERAL.—For purposes of this section, the term 'funding target attainment percentage' means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year (as determined under section 430(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 430(f)), bears to

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

''(2) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—

''(A) IN GENERAL.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this subparagraph and without regard to the reduction under paragraph (1)(A) for the pre-funding balance and the funding standard carryover balance), paragraph (1) shall be applied without regard to such reduction.

''(B) TRANSITION RULE.—Subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting for '100 percent' the applicable percentage determined in accordance with the following table:

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

''(C) LIMITATION.—Subparagraph (B) shall not apply with respect to any plan year after 2007 unless the funding target attainment percentage (determined without regard to this paragraph and without regard to the reduction under paragraph (1)(A) for the pre-funding balance and the funding standard carryover balance) of the plan for each preceding plan year after 2006 was not less than the applicable percentage with respect to such preceding plan year determined under subparagraph (B).

''(h) DEEMED REDUCTION OF FUNDING BALANCES.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers—

''(1) IN GENERAL.—In any case in which a benefit limitation under subsection (a), (b), or (c) would (but for this subsection and determined without regard to subsection (a)(2)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this title as having made an election under section 430(f)(5) to reduce the balance of the pre-funding balance and the funding standard carryover balance for the plan year (in a manner consistent with the requirements of section 430(f)(5)(B)) by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

''(2) EXCEPTION FOR INSUFFICIENT FUNDING BALANCES.—Paragraph (1) shall not apply with respect to a benefit limitation for any plan year if the application of paragraph (1)

would not result in the benefit limitation not applying for such plan year.''.

(2) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by adding at the end the following new item:

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

(c) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after December 31, 2006.

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

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

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009.

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

(d) SPECIAL RULE FOR 2007.—For purposes of applying subsection (e) of section 437 of such Code (as added by this section) to current plan years (within the meaning of such subsection) beginning in 2007, the modified funded current liability percentage of the plan for the preceding year shall be substituted for the funding target attainment percentage of the plan for the preceding year. For purposes of the preceding sentence, the term ''modified funded current liability percentage'' means the funded current liability percentage (as defined in section 412(l)(8) of such Code), reduced as described in subparagraph (E) thereof in the case of a plan with a funded current liability percentage (as so defined and before such reduction) which is less than 100 percent.

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

(a) AMENDMENTS RELATED TO QUALIFICATION REQUIREMENTS.—

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

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

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

(A) in subparagraph (A), by striking ''412(m)(5)'' each place it appears and inserting ''430(j)(4)'', and

(B) in subparagraph (C), by striking ''section 412(m) by reason of paragraph (5)(A) thereof'' and inserting ''section 430(j)(3) by reason of section 430(j)(4)(A)''.

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

(A) in subparagraph (B)(i), by striking ''funded current liability percentage (as defined in section 412(l)(8))'' and inserting ''funding target attainment percentage (as defined in section 430(d)(2))'',

(B) in subparagraph (B)(iii), by striking ''subsection 412(c)(8)'' and inserting ''section 412(d)(2)'', and

(C) in subparagraph (D), by striking ''section 412(c)(11) (without regard to subparagraph (B) thereof)'' and inserting ''section 412(b) (without regard to paragraph (2) thereof)''.

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

(1) by striking ''section 412(c)(8)'' in subsection (a)(3)(C) and inserting ''section 412(d)(2)'',

(2) in subsection (b)(1)(F)—

(A) by striking ''paragraphs (2) and (3) of section 412(i)'' in clause (ii) and inserting ''subparagraphs (B) and (C) of section 412(e)(3)'', and

(B) by striking ''paragraphs (4), (5), and (6) of section 412(i)'' and inserting ''subparagraphs (D), (E), and (F) of section 412(e)(3)'', and

(3) by striking ''section 412(c)(8)'' in subsection (d)(6)(A) and inserting ''section 412(d)(2)''.

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

''(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the target liability amount and target normal cost determined under section 430 in the case of any other plan), over''.

(d) TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.—

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

''(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

''(A) the lesser of—

''(i) the fair market value of the plan's assets (reduced by the pre-funding balance and the funding standard carryover balance, as determined under section 430(f)), or

''(ii) the value of plan assets as determined under section 430(g)(3) (reduced by the prefunding balance and the funding standard carryover balance, as determined under section 430(f)), over

''(B) 125 percent of the sum of the target liability amount and the target normal cost determined under section 430 for such plan year.''.

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

''(4) COORDINATION WITH SECTION 430.—In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(e) EXCISE TAXES.—

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

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

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

''(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

''(b) ADDITIONAL TAX.—If—

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

''(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

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

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

(A) by striking ''the last two sentences of section 412(a)'' in paragraph (1) and inserting ''section 431'', and

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

''(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

''(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years in the order in which such contributions became due and then to the minimum required contribution under section 430 for the plan year.''.

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

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

(A) by striking ''section 412(m)(5)'' and inserting ''section 430(j)(4)'', and

(B) by striking ''section 412(m)'' and inserting ''section 430(j)(3)''.

(5) Section 4972(c)(7) of such Code is amended by striking ''except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)'' and inserting ''except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))''.

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

(1) by striking ''the accumulated funding deficiency (as defined in section 412(a))'' in paragraph (2) and inserting ''the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431,'', and

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

''(B) the requirements for reasonable actuarial assumptions under section 430(h)(1) or 431(c)(3), whichever are applicable, have been complied with,''.

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

**Subtitle C—Other Provisions**

**SEC. 121. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.**

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

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that

was in 1996 within the controlled group of the plan sponsor); and

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

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

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

(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

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

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act,

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

(3) Section 430(c)(5)(B) of such Code and section 303(c)(5)(B) of such Act (relating to phase-in of funding target for exemption from new shortfall amortization base) shall each be applied by substituting ''2012'' for ''2011'' therein and by substituting for the table therein the following:

| In the case of a plan year beginning in calendar year: | The applicable percentage is: |
|---|---|
| 2007 | 90 percent |
| 2008 | 92 percent |
| 2009 | 94 percent |
| 2010 | 96 percent |
| 2011 | 98 percent. |

(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act, such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.

(d) SPECIAL RULE FOR 2006.—

(1) IN GENERAL.—Section 769(c)(3) of the Retirement Protection Act of 1994, as added by section 201 of the Pension Funding Equity Act of 2004, is amended by striking ''and 2005'' and inserting '', 2005, and 2006''.

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

(e) CONFORMING AMENDMENT.—

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

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

**SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.**

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) EMPLOYER'S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—If—

''(A) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status (as defined in section 430(i)(3)), assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

''(B) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Subparagraph (A) shall not apply with respect to any assets which are so set aside before the defined benefit plan is in at-risk status.''.

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

(d) SPECIAL RULE FOR 2006.—For purposes of determining if a plan is in at-risk status (within the meaning of section 409A of such Code, as added by this section) for any plan year beginning in 2006, such section shall be applied by substituting the plan's modified funded current liability percentage for the plan's funding target attainment percentage. For purposes of the preceding sentence, the term ''modified funded current liability percentage'' means the funded current liability percentage (as defined in section 412(l)(8) of such Code), reduced as described in subparagraph (E) thereof.

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

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

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

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 102) is amended further by inserting after section 303 the following new section:

''MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

''SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

''(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 15 plan years,

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

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

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

''(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULES FOR CERTAIN PRE-2007 AMORTIZATIONS.—

''(A) IN GENERAL.—In the case of any amount amortized under section 302(b) (as in

effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(B) INTEREST RATE.—For purposes of amortizations under section 302(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), in the case of any waiver under section 303 (as so in effect) or extension under section 304 (as so in effect) with respect to which application has been made before June 30, 2005, the interest rate under section 303(a)(2) (as so in effect) or section 304(a) (as so in effect), as the case may be, shall apply.

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

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

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose,

''(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose,

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises, and

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

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

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

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

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

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

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

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 302 in such manner as is determined by the Secretary of the Treasury.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

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

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

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

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

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

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

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

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

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

''(9) INTEREST RULE FOR WAIVERS AND EXTENSIONS.—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

''(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

''(B) the rate of interest used under the plan for determining costs.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan shall be extended by the Secretary of the Treasury for a period of time (not in excess of 5 years) if it is demonstrated to such Secretary that—

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

''(B) the plan sponsor has adopted a plan to improve the plan's funding status, and

''(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures.

''(2) ADDITIONAL EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if such Secretary determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if such Secretary determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21)) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 301 of such Act (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by section 102 of this Act) is amended further by inserting after

the item relating to section 303 the following new item:

''Sec. 304. Minimum funding standards for multiemployer plans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

**SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended further by inserting after section 304 the following new section:

''ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

''SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d).

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

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

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

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

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year under section 304 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan's funded percentage such that—

''(I) the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement period, is not more than

''(II) ⅔ of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement period.

''(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—

''(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

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

''(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

''(II) the plan year is prior to the day described in subparagraph (B)(ii),

subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(D) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

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

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution

structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

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

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986.

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

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

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

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

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

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

''(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 304(d).

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

''(ii) reasonable measures to forestall possible insolvency (within the meaning of section 4245) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

A rehabilitation must provide annual standards for meeting the requirements of such rehabilitation plan.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan's entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party who—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

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

''(i) a monthly benefit equal to 1 percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the plan year in which the plan enters critical status, or

''(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

''(F) PROTECTION OF RESTORED RATES OF ACCRUAL.—

''(i) IN GENERAL.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below any restored accrual rate.

''(ii) RESTORED ACCRUAL RATE.—For purposes of clause (i), the term 'restored accrual rate' means a rate of benefit accruals which was reduced and subsequently restored before entry of the plan into critical status.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) SPECIAL RULES.—

''(A) AUTOMATIC EMPLOYER SURCHARGE.—

''(i) 5 PERCENT AND 10 PERCENT SURCHARGE.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be obligated to pay to the plan a surcharge equal to 5 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each consecutive plan year thereafter in which the plan is in critical status, the surcharge shall be 10 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes).

''(ii) ENFORCEMENT OF SURCHARGE.—The surcharges under clause (i) shall be due and payable on the same schedule as the contributions on which they are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.

''(iii) SURCHARGE TO TERMINATE UPON CBA RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement, beginning on the date on which that agreement is renegotiated to include—

''(I) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

''(II) otherwise collectively bargained benefit changes.

''(iv) SURCHARGE NOT TO APPLY UNTIL EMPLOYER RECEIVES 30-DAY NOTICE.—The surcharge under this subparagraph shall not apply to an employer until 30 days after the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

''(v) SURCHARGE NOT TO GENERATE INCREASED BENEFIT ACCRUALS.—Notwithstanding any provision of a plan to the contrary, the amount of any surcharge shall not be the basis for any benefit accruals under the plan.

''(B) BENEFIT ADJUSTMENTS.—

''(i) IN GENERAL.—The trustees shall make appropriate reductions, if any, to adjustable benefits based upon the outcome of collective bargaining over the schedules provided under paragraph (5).

''(ii) RETIREE PROTECTION.—Except as provided in subparagraph (C), the trustees of a plan in critical status may not reduce adjustable benefits of any participant or beneficiary who was in pay status at least one year before the first day of the first plan year in which the plan enters into critical status.

''(iii) TRUSTEE FLEXIBILITY.—The trustees shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate based on the plan's then current overall funding status and its future prospects in light of the results of the parties' negotiations.

''(C) ADJUSTABLE BENEFIT DEFINED.—For purposes of this paragraph, the term 'adjustable benefit' means—

''(i) benefits, rights, and features, such as post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

''(ii) retirement-type subsidies, early retirement benefits, and benefit payment options (other than the 50 percent qualified joint-and-survivor benefit and single life annuity), and

''(iii) benefit increases that would not be eligible for a guarantee under section 4022A on the first day of the plan year in which the plan enters into critical status because they were adopted, or if later, took effect less than 60 months before reorganization.

''(D) NORMAL RETIREMENT BENEFITS PROTECTED.—Nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age which is not an adjustable benefit.

''(E) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

''(i) BENEFIT REDUCTIONS.—Any benefit reductions under this paragraph shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

''(ii) SURCHARGES.—Any surcharges under this paragraph shall be disregarded in determining an employer's withdrawal liability under section 4211, except for purposes of determining the unfunded vested benefits attributable to an employer or under a modified attributable method adopted with the approval of the Pension Benefit Guaranty Corporation under subsection (c)(5) of that section.

''(8) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the rehabilitation plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

''(9) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

''(10) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 or a partial withdrawal by the employer under section 4205.

''(11) SPECIAL RULE FOR PLAN AMENDMENTS.—A multiemployer plan in critical status shall not fail to meet the requirements of section 204(g) or section 411(d)(6) of the Internal Revenue Code of 1986 solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of this subsection.

''(d) DEFINITIONS.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 304(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit

under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a).

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

(b) ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6) by striking ''(6), or (7)'' and inserting ''(6), (7), or (8)'';

(2) by redesignating subsection (c)(8) as subsection (c)(9); and

(3) by inserting after subsection (c)(7) the following new paragraph:

''(8) The Secretary may assess a civil penalty against—

''(A) any person of not more than $1,100 per day for each violation by such person of subsection (a)(1), (b)(1), or (c)(1) of section 305, or

''(B) any plan sponsor for failure by the plan sponsor to implement the terms of any funding improvement plan or rehabilitation plan adopted under section 305.''.

(c) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended further by inserting after the item relating to section 304 the following new item:

''Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

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

**SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after December 31, 2005.

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

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY IN THE EVENT OF CERTAIN SALES OF EMPLOYER ASSETS TO UNRELATED PARTIES.—

(1) IN GENERAL.—Section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 4225.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) REPEAL OF LIMITATION TO 20 ANNUAL PAYMENTS.—

(1) IN GENERAL.—Section 4219(c)(1) of such Act (29 U.S.C. 1399(c)(1)) is amended by striking subparagraph (B).

(2) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to withdrawals occurring on or after January 1, 2006.

(c) WITHDRAWAL LIABILITY CONTINUES IF WORK CONTRACTED OUT.—

(1) IN GENERAL.—Clause (i) of section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended by inserting ''or to another party or parties'' after ''to another location''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work transferred on or after the date of the enactment of this Act.

(d) REPEAL OF SPECIAL RULE FOR LONG AND SHORT HAUL TRUCKING INDUSTRY.—

(1) IN GENERAL.—Subsection (d) of section 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to cessations to have obligations to contribute to multiemployer plans and cessations of covered operations under such plans occurring on or after January 1, 2006.

(e) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

**SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO PROCEDURES APPLICABLE TO DISPUTES INVOLVING WITHDRAWAL LIABILITY.**

(a) IN GENERAL.—Section 4221(f)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(f)(1)) is amended—

(1) in subparagraph (A) by inserting ''and'' after ''plan,'', and

(2) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

''(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of any transaction which occurred at least 5 years (2 years in the case of a small employer) before the date of the complete or partial withdrawal was to evade or avoid withdrawal liability under this subtitle,''.

(b) SMALL EMPLOYER.—Paragraph (2) of section 4221(f) of such Act is amended by adding at the end the following new subparagraph:

''(C) SMALL EMPLOYER.—For purposes of paragraph (1)(B)—

''(i) IN GENERAL.—The term 'small employer' means any employer who (as of immediately before the transaction referred to in paragraph (1)(B))—

''(I) employs not more than 500 employees, and

''(II) is required to make contributions to the plan for not more than 250 employees.

''(ii) CONTROLLED GROUP.—Any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subparagraph.''.

(c) ADDITIONAL AMENDMENTS.—

(1) Subparagraph (A) of section 4221(f)(2) of such Act (29 U.S.C. 1401(f)(2)) is amended by striking ''Notwithstanding'' and inserting ''In the case of a transaction occurring before January 1, 1999, and at least 5 years before the date of the complete or partial withdrawal, notwithstanding''.

(2) Section 4221(f)(2)(B) of such Act (29 U.S.C. 1401(f)(2)(B)) is amended—

(A) by inserting ''with respect to withdrawal liability payments'' after ''determination'' the first place it appears, and

(B) by striking ''any'' and inserting ''the''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 on or after the date of the enactment of this Act.

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

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

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

**''SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

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

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

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 418B.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which section 412 applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

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

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

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the

meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

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

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

''(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULES FOR PRE-2007 AMORTIZATIONS.—

''(A) IN GENERAL.—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(B) INTEREST RATE.—For purposes of amortizations under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), in the case of any waiver under section 412(d) (as so in effect) or extension under section 412(e) (as so in effect) with respect to which application has been made before June 30, 2005, the interest rate under section 412(d)(1)(A) (as so in effect) or section 412(e) (as so in effect), as the case may be, shall apply.

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

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

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose,

''(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose,

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises, and

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

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

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

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of the Employee Retirement Income Security Act of 1974 or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

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

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

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

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

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

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

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

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

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

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

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

''(9) INTEREST RULE FOR WAIVERS AND EXTENSIONS.—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

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

''(B) the rate of interest used under the plan for determining costs.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan shall be extended by the Secretary for a period of time (not in excess of 5 years) if it is demonstrated to the Secretary that—

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

''(B) the plan sponsor has adopted a plan to improve the plan's funding status, and

''(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures.

''(2) ADDITIONAL EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary for a period of time (not in excess of 5 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if the Secretary determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) CONFORMING AMENDMENTS.—

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

(A) by striking ''section 412(b)(2)'' in subparagraph (A) and inserting ''section 431(b)(2)'', and

(B) by striking ''section 412(b)(3)(B)'' in subparagraph (B) and inserting ''section 431(b)(3)(B)''.

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

(A) by striking ''section 412(b)(2)(A) or (B)'' in subsection (d)(1)(B) and inserting ''section 431(b)(2)(A) or (B)'',

(B) by striking ''section 412(c)(8)'' in subsection (e) and inserting ''section 412(d)(2)'', and

(C) by striking ''section 412(c)(3)'' in subsection (g) and inserting ''section 431(c)(3)''.

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

(A) by striking ''section 412(c)(8)'' and inserting ''section 412(d)(2)'', and

(B) by striking ''section 412(c)(10)'' and inserting ''section 431(c)(8)''.

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

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

**SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 431 the following new section:

**''SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

''(a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d) of the Employee Retirement Income Security Act of 1974.

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

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

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

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

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

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

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan's funded percentage such that—

''(I) the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement period, is not more than

''(II) ⅔ of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement period.

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

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—

''(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

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

''(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

''(II) the plan year is prior to the day described in subparagraph (B)(ii),

subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(D) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

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

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

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

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

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

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

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

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

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

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

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

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

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

''(ii) reasonable measures to forestall possible insolvency (within the meaning of section 418E) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

A rehabilitation must provide annual standards for meeting the requirements of such rehabilitation plan.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan's entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party who—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

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

''(i) a monthly benefit equal to 1 percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the plan year in which the plan enters critical status, or

''(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

''(F) PROTECTION OF RESTORED RATES OF ACCRUAL.—

''(i) IN GENERAL.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below any restored accrual rate.

''(ii) RESTORED ACCRUAL RATE.—For purposes of clause (i), the term 'restored accrual rate' means a rate of benefit accruals which was reduced and subsequently restored before entry of the plan into critical status.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) SPECIAL RULES.—

''(A) AUTOMATIC EMPLOYER SURCHARGE.—

''(i) 5 PERCENT AND 10 PERCENT SURCHARGE.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be obligated to pay to the plan a surcharge equal to 5 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each consecutive plan year thereafter in which the plan is in critical status, the surcharge shall be 10 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes).

''(ii) ENFORCEMENT OF SURCHARGE.—The surcharges under clause (i) shall be due and payable on the same schedule as the contributions on which they are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 of the Employee Retirement Income Security Act of 1974 and shall be enforceable as such.

''(iii) SURCHARGE TO TERMINATE UPON CBA RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement, beginning on the date on which that agreement is renegotiated to include—

''(I) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

''(II) otherwise collectively bargained benefit changes.

''(iv) SURCHARGE NOT TO APPLY UNTIL EMPLOYER RECEIVES 30-DAY NOTICE.—The surcharge under this subparagraph shall not apply to an employer until 30 days after the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

''(v) SURCHARGE NOT TO GENERATE INCREASED BENEFIT ACCRUALS.—Notwithstanding any provision of a plan to the contrary, the amount of any surcharge shall not be the basis for any benefit accruals under the plan.

''(B) BENEFIT ADJUSTMENTS.—

''(i) IN GENERAL.—The trustees shall make appropriate reductions, if any, to adjustable benefits based upon the outcome of collective bargaining over the schedules provided under paragraph (5).

''(ii) RETIREE PROTECTION.—Except as provided in subparagraph (C), the trustees of a plan in critical status may not reduce adjustable benefits of any participant or beneficiary who was in pay status at least one year before the first day of the first plan year in which the plan enters into critical status.

''(iii) TRUSTEE FLEXIBILITY.—The trustees shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate based on the plan's then current overall funding status and its future prospects in light of the results of the parties' negotiations.

''(C) ADJUSTABLE BENEFIT DEFINED.—For purposes of this paragraph, the term 'adjustable benefit' means—

''(i) benefits, rights, and features, such as post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

''(ii) retirement-type subsidies, early retirement benefits, and benefit payment options (other than the 50 percent qualified joint-and-survivor benefit and single life annuity), and

''(iii) benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of the plan year in which the plan enters into critical status because they were adopted, or if later, took effect less than 60 months before reorganization.

''(D) NORMAL RETIREMENT BENEFITS PROTECTED.—Nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age which is not an adjustable benefit.

''(E) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

''(i) BENEFIT REDUCTIONS.—Any benefit reductions under this paragraph shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

''(ii) SURCHARGES.—Any surcharges under this paragraph shall be disregarded in determining an employer's withdrawal liability under section 4211 of the Employee Retirement Income Security Act of 1974, except for purposes of determining the unfunded vested benefits attributable to an employer or under a modified attributable method adopted with the approval of the Pension Benefit

Guaranty Corporation under subsection (c)(5) of that section.

''(8) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the rehabilitation plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

''(9) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

''(10) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement Income Security Act of 1974 or a partial withdrawal by the employer under section 4205 of such Act.

''(11) SPECIAL RULE FOR PLAN AMENDMENTS.—A multiemployer plan in critical status shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 411(d)(6) solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of this subsection.

''(d) DEFINITIONS.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 431(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

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

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

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

(b) EXCISE TAX ON FAILURES TO ACT WITH RESPECT TO MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Section 4971 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following:

''(g) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) SUBSTITUTION OF EXCISE TAX FOR INITIAL AND ADDITIONAL TAX.—In the case of a multiemployer plan to which section 432(c) applies for a period, subsections (a) and (b) shall not apply with respect to such period.

''(2) FAILURE TO ADOPT REHABILITATION PLAN.—

''(A) IN GENERAL.—In the case of a multiemployer plan to which section 432(c) applies, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan.

''(B) AMOUNT OF TAX.—The amount of the tax imposed under subparagraph (A) with respect to any plan sponsor shall be the greater of—

''(i) the amount of tax imposed under subsection (a) (determined without regard to this subsection), or

''(ii) the amount equal to $1,100 multiplied by the number of days in the period beginning on the first day of the 240-day period described in section 432(c)(1) and ending on the day on which the rehabilitation plan is adopted.

''(C) LIABILITY FOR TAX.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

''(ii) PLAN SPONSOR.—For purposes of clause (i), the term 'plan sponsor' in the case of a multiemployer plan means the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

''(3) FAILURE TO COMPLY WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—In the case of a multiemployer plan to which section 432(c) applies, there is hereby imposed a tax on each failure to make a required contribution under the rehabilitation plan within the time required under such plan.

''(B) AMOUNT OF TAX.—The amount of the tax imposed by subparagraph (A) shall be, with respect to each required contribution under the rehabilitation plan, the amount equal to the excess of the amount of such required contribution over the amount contributed.

''(C) LIABILITY FOR TAX.—The tax imposed by subparagraph (A) shall be paid by the employer responsible for contributing to or under the rehabilitation plan which fails to make the contribution.

''(4) REHABILITATION PLAN.—For purposes of this subsection, the term 'rehabilitation plan' means the plan required to be adopted under section 432(c).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

''Sec. 432. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2005.

(e) SPECIAL RULE FOR 2006.—In the case of any plan year beginning in 2006, any reference in section 432 of the Internal Revenue Code of 1986 (as added by this section) to section 431 of such Code (as added by this Act) shall be treated as a reference to the corresponding provision of such Code as in effect for plan years beginning in such year.

**SEC. 213. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 418E(d)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years'', and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after December 31, 2005.

## TITLE III—OTHER PROVISIONS

**SEC. 301. INTEREST RATE FOR 2006 FUNDING REQUIREMENTS.**

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Subclause (II) of section 302(b)(5)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(5)(B)(ii)) is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(2) CURRENT LIABILITY.—Subclause (IV) of section 302(d)(7)(C)(i) of such Act (29 U.S.C. 1082(d)(7)(C)(i)) is amended—

(A) by striking ''or 2005'' and inserting '', 2005, or 2006'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

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

(A) by striking ''or 2005'' and inserting '', 2005, or 2006'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

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

**SEC. 302. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.**

(a) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Paragraph (3) of section 205(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to read as follows:

''(3)(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

''(B) For purposes of subparagraph (A)—

''(i) The term 'applicable mortality table' means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under section 303(h)(3).

''(ii) The term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

''(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

''(I) section 303(h)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields',

''(II) section 303(h)(2)(G)(i)(II) were applied by substituting 'section 205(g)(3)(A)(ii)(II)' for 'section 302(b)(5)(B)(ii)(II)', and

''(III) the applicable percentage under section 303(h)(2)(G) were determined in accordance with the following table:

| ``In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2007 | 20 percent |
| 2008 | 40 percent |
| 2009 | 60 percent |
| 2010 | 80 percent.''. |

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Paragraph (3) of section 417(e) of the Internal Revenue Code of 1986 is amended to read as follows:

''(3) DETERMINATION OF PRESENT VALUE.—

''(A) IN GENERAL.—For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

''(B) APPLICABLE MORTALITY TABLE.—For purposes of subparagraph (A), the term 'applicable mortality table' means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3).

''(C) APPLICABLE INTEREST RATE.—For purposes of subparagraph (A), the term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

''(D) APPLICABLE SEGMENT RATES.—For purposes of subparagraph (C), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) if—

''(i) section 430(h)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields',

''(ii) section 430(h)(2)(G)(i)(II) were applied by substituting 'section 417(e)(3)(A)(ii)(II)' for 'section 412(b)(5)(B)(ii)(II)', and

''(iii) the applicable percentage under section 430(h)(2)(G) were determined in accordance with the following table:

| ``In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2007 | 20 percent |
| 2008 | 40 percent |
| 2009 | 60 percent |
| 2010 | 80 percent.''. |

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2006.

**SEC. 303. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.**

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

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

''(I) 5.5 percent,

''(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

''(III) the rate specified under the plan.''.

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

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

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subparagraph (A) of section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following new sentence: ''A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.''.

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

''(35) DISTRIBUTIONS DURING WORKING RETIREMENT.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because a distribution is made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in plan years beginning after December 31, 2005.

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

(a) DEFINITION OF AMOUNT INVOLVED.—Section 502(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(i)) is amended to read as follows:

''(i)(1) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. Except as provided in paragraph (2), the amount of such penalty may not exceed 5 percent of the amount involved in each such transaction for each year or part thereof during which the prohibited transaction continues.

''(2) If the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

''(3) For purposes of paragraph (1)—

''(A) Except as provided in subparagraphs (C) and (D), the term 'amount involved' means, with respect to a prohibited transaction, the greater of—

''(i) the amount of money and the fair market value of the other property given, or

''(ii) the amount of money and the fair market value of the other property received.

''(B) For purposes of subparagraph (A), fair market value shall be determined as of the date on which the prohibited transaction occurs, except that in the case described in paragraph (2) fair market value shall be the highest fair market value during the period between the date of the transaction and the date of correction.

''(C) In the case of services described in subsection (b)(2) or (c)(2) of section 408, the term 'amount involved' means only the amount of excess compensation.

''(D) In the case of principal transactions prohibited under section 406(a) involving securities or commodities, the term 'amount involved' means only the amount received by the disqualified person in excess of the amount such person would have received in an arm's length transaction with an unrelated party as of the same date.

''(E) For the purposes of this paragraph—

''(i) the term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof), and

''(ii) the term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).''.

(b) EXEMPTION FOR BLOCK TRADING.—

(1) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 408(b) of such Act (29 U.S.C. 1108(b)), as amended by section 601, is further amended by adding at the end the following new paragraph:

''(15)(A) Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary described in section 3(21)(A)(ii)) with respect to a plan if—

''(i) the transaction involves a block trade,

''(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade, and

''(iii) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction.

''(B) For purposes of this paragraph, the term 'block trade' includes any trade which will be allocated across two or more client accounts of a fiduciary.''.

(2) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(A) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions) is amended by striking ''or'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', or'', and by adding at the end the following new paragraph:

''(17) any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary described in subsection (e)(3)(B)) with respect to a plan if—

''(A) the transaction involves a block trade,

''(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade, and

''(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction.

''(D) For purposes of this paragraph, the term 'block trade' includes any trade which will be allocated across two or more client accounts of a fiduciary.''.

(B) SPECIAL RULE RELATING TO BLOCK TRADE.—Subsection (f) of section 4975 of such Code (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) BLOCK TRADE.—For purposes of subsection (d)(17), the term 'block trade' includes any trade which will be allocated across two or more client accounts of a fiduciary.''.

(c) BONDING RELIEF.— Section 412(a) of such Act (29 U.S.C. 1112(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3);

(2) by striking ''and'' at the end of paragraph (1); and

(3) by inserting after paragraph (1) the following new paragraph:

''(2) no bond shall be required of an entity which is subject to regulation as a broker or a dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or an entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including requirements imposed by a self-regulatory organization (within the meaning of section 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)), or any affiliate with respect to which the broker or dealer agrees to be liable to the same extent as if they held the assets directly.''.

(d) EXEMPTION FOR ELECTRONIC COMMUNICATION NETWORK.—

(1) IN GENERAL.—Section 408(b) of such Act (as amended by subsection (b)) is further amended by adding at the end the following:

''(16) Any transaction involving the purchase or sale of securities, or other property (as determined in regulations of the Secretary) between a plan and a fiduciary or a party in interest if—

''(A) the transaction is executed through an exchange, electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

''(i) the applicable Federal regulating entity, or

''(ii) such other applicable governmental regulating agency as the Secretary may determine appropriate in the case of any fiduciary or party in interest or class of fiduciaries or parties in interest or any transaction or class of transactions,

''(B) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

''(C) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system,

''(D) the price and compensation associated with the purchase and sale are not greater than an arm's length transaction with an unrelated party,

''(E) if the fiduciary or party in interest has an ownership interest in the system or venue described in subparagraph (A), the system or venue has been authorized under the plan for transactions described in this paragraph, and

''(F) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A), the plan administrator is provided written notice of the execution of such transaction through such system or venue.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 30 days after the date of the enactment of this Act.

(e) CONFORMING ERISA'S PROHIBITED TRANSACTION PROVISION TO FERSA.—Section 408(b) of such Act (29 U.S.C. 1106), as amended by subsection (d), is further amended by adding at the end the following new paragraph:

''(17)(A) transactions described in subparagraphs (A), (B), and (D) of section 406(a)(1) between a plan and a party that is a party in interest (under section 3(14)) solely by reason of providing services, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration.

''(B) For purposes of this paragraph, the term 'adequate consideration' means—

''(i) in the case of a security for which there is a generally recognized market—

''(I) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

''(II) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

''(ii) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary.''.

(f) RELIEF FOR FOREIGN EXCHANGE TRANSACTIONS.— Section 408(b) of such Act (as amended by the preceding provisions of this section) is further amended by adding at the end the following new paragraph:

''(18) Any foreign exchange transactions, between a bank or broker-dealer, or any affiliate of either thereof, and a plan with respect to which the bank or broker-dealer, or any affiliate, is a trustee, custodian, fiduciary, or other party in interest, if—

''(A) the transaction is in connection with the purchase or sale of securities,

''(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or the broker-dealer (or any affiliate thereof) in comparable arm's-length foreign exchange transactions involving unrelated parties, and

''(C) the exchange rate used by the bank or broker-dealer for a particular foreign exchange transaction may not deviate by more than 3 percent from the interbank bid and asked rates at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency.''.

(g) DEFINITION OF PLAN ASSET VEHICLE.— Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

''(42) the term 'plan assets' means plan assets as defined by such regulations as the Secretary may prescribe, except that under such regulations the assets of any entity shall not be treated as plan assets if, immediately after the most recent acquisition of any equity interest in the entity, less than 50 percent of the total value of each class of equity interest in the entity is held by employee benefit plan investors. For purposes of determinations pursuant to this paragraph, the value of any equity interest owned by a person (other than such an employee benefit plan) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded for purposes of calculating the 50 percent threshold. An entity shall be considered to hold plan assets only to the extent of the percentage of the equity interest owned by benefit plan investors. For purposes of this paragraph, the term 'benefit plan investor' means an employee benefit plan subject to this part and any plan to which section 4975 of the Internal Revenue Code of 1986 applies.''.

**SEC. 306. CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.**

(a) AMENDMENT OF EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)), as amended by sections 304 and 601, is further amended by adding at the end the following new paragraph:

''(19)(A) Except as provided in subparagraphs (B) and (C), a transaction described in section 406(a) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

''(B) Subparagraph (A) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

''(C) In the case of any fiduciary or other party in interest (or any other person knowingly participating in such transaction), subparagraph (A) does not apply to any transaction if, at the time the transaction occurs, such fiduciary or party in interest (or other person) knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

''(D) For purposes of this paragraph, the term 'correction period' means, in connection with a fiduciary or party in interest (or other person knowingly participating in the transaction), the 14-day period beginning on the date on which such fiduciary or party in interest (or other person) discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

''(E) For purposes of this paragraph—

''(i) The term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof).

''(ii) The term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).

''(iii) The term 'correct' means, with respect to a transaction—

''(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

''(II) to restore to the plan or affected account any profits made through the use of assets of the plan.''.

(b) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions), as amended by this Act, is amended by striking ''or'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', or'', and by adding at the end the following new paragraph:

''(18) except as provided in subsection (f)(9), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the

transaction is corrected before the end of the correction period.''.

(2) SPECIAL RULES RELATING TO CORRECTION PERIOD.—Subsection (f) of section 4975 of such Code (relating to other definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(9) CORRECTION PERIOD.—

''(A) IN GENERAL.—For purposes of subsection (d)(18), the term 'correction period' means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(18)) constitute a prohibited transaction.

''(B) EXCEPTIONS.—

''(i) EMPLOYER SECURITIES.—Subsection (d)(18) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

''(ii) KNOWING PROHIBITED TRANSACTION.—In the case of any disqualified person, subsection (d)(18) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a prohibited transaction.

''(C) ABATEMENT OF TAX WHERE THERE IS A CORRECTION.—If a transaction is not treated as a prohibited transaction by reason of subsection (d)(18), then no tax under subsection (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

''(D) DEFINITIONS.—For purposes of this paragraph and subsection (d)(18)—

''(i) SECURITY.—The term 'security' has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof).

''(ii) COMMODITY.—The term 'commodity' has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof).

''(iii) CORRECT.—The term 'correct' means, with respect to a transaction—

''(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

''(II) to restore to the plan or affected account any profits made through the use of assets of the plan.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act constitutes a prohibited transaction.

**SEC. 307. RECOVERY BY REIMBURSEMENT OR SUBROGATION WITH RESPECT TO PROVIDED BENEFITS.**

(a) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)) is amended by adding, after and below paragraph (9), the following new sentence:

''Actions described under paragraph (3) include an action by a fiduciary for recovery of amounts on behalf of the plan enforcing terms of the plan that provide a right of recovery by reimbursement or subrogation with respect to benefits provided to or for a participant or beneficiary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2006.

**SEC. 308. EXERCISE OF CONTROL OVER PLAN ASSETS IN CONNECTION WITH QUALIFIED CHANGES IN INVESTMENT OPTIONS.**

(a) IN GENERAL.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

''(4)(A) In any case in which a qualified change in investment options occurs in connection with an individual account plan, a participant or beneficiary shall not be treated for purposes of paragraph (1) as not exercising control over the assets in his account in connection with such change if the requirements of subparagraph (C) are met in connection with such change.

''(B) For purposes of subparagraph (A), the term 'qualified change in investment options' means, in connection with an individual account plan, a change in the investment options offered to the participant or beneficiary under the terms of the plan, under which—

''(i) the participant's account is reallocated among one or more new investment options which are offered in lieu of one or more investment options offered immediately prior to the effective date of the change, and

''(ii) the characteristics of the new investment options, including characteristics relating to risk and rate of return, are, as of immediately after the change, reasonably similar to those of the existing investment options as of immediately before the change.

''(C) The requirements of this subparagraph are met in connection with a qualified change in investment options if—

''(i) at least 60 days prior to the effective date of the change, the plan administrator furnishes written notice of the change to the participants and beneficiaries, including information comparing the existing and new investment options and an explanation that, in the absence of affirmative investment instructions from the participant or beneficiary to the contrary, the account of the participant or beneficiary will be invested in the manner described in subparagraph (B),

''(ii) the participant has not provided to the plan administrator, in advance of the effective date of the change, affirmative investment instructions contrary to the change, and

''(iii) the investments under the plan of the participant or beneficiary as in effect immediately prior to the effective date of the change was the product of the exercise by such participant or beneficiary of control over the assets of the account within the meaning of paragraph (1).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to changes in investment options taking effect on or after January 1, 2006.

**SEC. 309. CLARIFICATION OF FIDUCIARY RULES.**

Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall issue final regulations clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan to a participant or beneficiary—

(1) is not subject to the safest available annuity standard under Interpretive Bulletin 95–1 (29 C.F.R. 2509.95–1), and

(2) is subject to all otherwise applicable fiduciary standards.

**SEC. 310. GOVERNMENT ACCOUNTABILITY OFFICE PENSION FUNDING REPORT.**

(a) IN GENERAL.—The Comptroller General of the Government Accountability Office shall transmit to the Congress a pension funding report not later than one year after the date of the enactment of this Act.

(b) REPORT CONTENT.—The pension funding report required under subsection (a) shall include an analysis of the feasibility, advantages, and disadvantages of—

(1) requiring an employee pension benefit plan to insure a portion of such plan's total investments;

(2) requiring an employee pension benefit plan to adhere to uniform solvency standards set by the Pension Benefit Guaranty Corporation, which are similar to those applied on a State level in the insurance industry; and

(3) amortizing a single-employer defined benefit pension plan's shortfall amortization base (referred to in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 (as amended by this Act)) over various periods of not more than 7 years.

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

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

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

(1) by striking clause (i) of subparagraph (A) and inserting the following:

''(i) in the case of a single-employer plan, an amount equal to—

''(I) for plan years beginning after December 31, 1990, and before January 1, 2006, $19, or

''(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (F),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;''; and

(2) by adding at the end the following new subparagraph:

''(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of $30 or the adjusted amount determined under clause (ii).

''(ii) For plan years beginning after 2006, the adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to

''(II) the national average wage index (as so defined) for 2004,

with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.

''(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2005 and before 2010—

''(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

| ''If the plan year begins in: | The amount is: |
|---|---|
| 2006 | $21.20 |
| 2007 | $23.40 |
| 2008 | $25.60 |
| 2009 | $27.80; or |

''(II) if the plan's funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection

with such current plan year in the following table:

| ``If the plan year begins in: | The amount is: |
|---|---|
| 2006 | $22.67 |
| 2007 | $26.33 |
| 2008 or 2009 | the amount provided under clause (i). |

''(iv) For purposes of this subparagraph, the term 'funding target attainment percentage' has the meaning provided such term in section 303(d)(2).''.

(b) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—Subsection (a) of section 4006 of such Act (29 U.S.C. 1306) is amended by adding at the end the following:

''(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

''(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

''(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—If the plan is terminated under 4041(c)(2)(B)(ii) or under section 4042 and, as of the termination date, a person who is (as of such date) a contributing sponsor of the plan or a member of such sponsor's controlled group has filed or has had filed against such person a petition seeking reorganization in a case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge of such person in such case.

''(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—The term 'applicable 12-month period' means—

''(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

''(II) each of the first two 12-month periods immediately following the period described in subclause (I).

''(ii) PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In any case in which the requirements of subparagraph (B) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged in the case described in such clause in connection with such person.

''(D) COORDINATION WITH SECTION 4007.—

''(i) Notwithstanding section 4007—

''(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

''(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

''(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.''.

(c) RISK-BASED PREMIUMS.—

(1) EXTENSION THROUGH 2006.—Section 4006(a)(3)(E)(iii)(V) of such Act is amended by striking ''January 1, 2006'' and inserting ''January 1, 2007''.

(2) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act is amended by striking clauses (iii) and (iv) and inserting the following:

''(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term 'unfunded vested benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and only vested benefits were taken into account.

''(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were applied by substituting 'the yields' for 'the 3-year weighted average of yields', as applicable under rules similar to the rules under section 303(h)(2)(B).''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) and (c)(1) shall apply to plan years beginning after December 31, 2005.

(2) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—The amendment made by subsection (b) shall apply with respect to cases commenced under title 11, United States Code, or under any similar law of a State or political subdivision of a State after October 26, 2005.

(3) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—The amendments made by subsection (c)(2) shall take effect on December 31, 2006, and shall apply to plan years beginning after such date.

## TITLE V—DISCLOSURE

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

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

(1) in the heading, by striking ''MULTIEMPLOYER'';

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

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

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

''(II) in the case of a multiemployer plan, a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and''.

(b) INCLUSION OF STATEMENT OF THE RATIO OF INACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) is amended—

(1) in clause (iii)(II) (added by subsection (a)(3) of this section), by striking ''and'' at the end;

(2) in clause (iv), by striking ''apply.'' and inserting ''apply; and''; and

(3) by adding at the end the following new clause:

''(v) a statement of the ratio, as of the end of the plan year to which the notice relates, of—

''(I) the number of participants who are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

''(II) the number of participants who are in covered service under the plan.''.

(c) COMPARISON OF MONTHLY AVERAGE OF VALUE OF PLAN ASSETS TO PROJECTED CURRENT LIABILITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) (as amended by the preceding provisions of this section) is amended further—

(1) by striking clause (ii) and inserting the following:

''(ii) a statement of a reasonable estimate of—

''(I) the value of the plan's assets for the plan year to which the notice relates,

''(II) projected liabilities of the plan for the plan year to which the notice relates, and

''(III) the ratio of the estimated amount determined under subclause (I) to the estimated amount determined under subclause (II);''; and

(2) by adding at the end (after and below clause (v)) the following:

''For purposes of determining a plan's projected liabilities for a plan year under clause (ii)(II), such projected liabilities shall be determined by projecting forward in a reasonable manner to the end of the plan year the liabilities of the plan to participants and beneficiaries as of the first day of the plan year, taking into account any significant events that occur during the plan year and that have a material effect on such liabilities, including any plan amendments in effect for the plan year.''.

(d) STATEMENT OF PLAN'S FUNDING POLICY AND METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

(1) in clause (iv), by striking ''and'' at the end;

(2) in clause (v), by striking the period and inserting ''; and''; and

(3) by inserting after clause (v) the following new clause:

''(vi) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates.''.

(e) NOTICE OF FUNDING IMPROVEMENT PLAN OR REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER PLAN.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

(1) in clause (v), by striking ''and'' at the end;

(2) in clause (vi), by striking the period and inserting ''; and''; and

(3) by inserting after clause (vi) the following new clause:

''(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates.''.

(f) NOTICE DUE 90 DAYS AFTER PLAN'S VALUATION DATE.—

(1) IN GENERAL.—Section 101(f)(3) of such Act (29 U.S.C. 1021(f)(3)) is amended by striking ''two months after the deadline (including extensions) for filing the annual report for the plan year'' and inserting ''90 days after the end of the plan year''.

(2) MODEL NOTICE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model version of the notice required by section 101(f) of the Employee Retirement Income Security Act of 1974.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

### SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.

(a) ADDITIONAL ANNUAL REPORTING REQUIREMENTS.—Section 103 of the Employee

Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—

(1) in subsection (a)(1)(B), by striking ''subsections (d) and (e)'' and inserting ''subsections (d), (e), and (f)''; and

(2) by adding at the end the following new subsection:

''(f)(1) With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

''(A) The ratio, as of the end of such plan year, of—

''(i) the number of participants who, as of the end of such plan year, are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

''(ii) the number of participants who are in covered service under the plan as of the end of such plan year.

''(B) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries borne by 2 or more pension plans as of immediately before such plan year, the funded ratio of each of such 2 or more pension plans as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

''(C) For purposes of this paragraph, the term 'funded ratio' means, in connection with a plan, the percentage which—

''(i) the value of the plan's assets is of

''(ii) the liabilities to participants and beneficiaries under the plan.

''(2) With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include the following:

''(A) The number of employers obligated to contribute to the plan as of the end of such plan year.

''(B) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.''.

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting after paragraph (11) the following new paragraph:

''(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.''.

(c) FILING AFTER 285 DAYS AFTER PLAN YEAR ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of such Act (29 U.S.C. 1024(a)(1)) is amended by inserting after the first sentence the following new sentence: ''In the case of a pension plan, the Secretary may extend the deadline for filing the annual report for any plan year past 285 days after the close of the plan year only on a case by case basis and only in cases of hardship, in accordance with regulations which shall be prescribed by the Secretary.''.

(d) INTERNET DISPLAY OF INFORMATION.—Section 104(b) of such Act (29 U.S.C. 1024(b)) is amended by adding at the end the following:

''(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on a website maintained by the Secretary on the Internet and other appropriate media. Such information shall also be displayed on any website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) on the Internet, in accordance with regulations which shall be prescribed by the Secretary.''.

(e) SUMMARY ANNUAL REPORT FILED WITHIN 15 DAYS AFTER DEADLINE FOR FILING OF ANNUAL REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended—

(1) by striking ''Within 210 days after the close of the fiscal year of the plan,'' and inserting ''Within 15 business days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan,''; and

(2) by striking ''the latest'' and inserting ''such''.

(f) DISCLOSURE OF PLAN ASSETS AND LIABILITIES IN SUMMARY ANNUAL REPORT.—

(1) IN GENERAL.—Section 104(b)(3) of such Act (as amended by subsection (a)) is amended further—

(A) by inserting ''(A)'' after ''(3)''; and

(B) by adding at the end the following:

''(B) The material provided pursuant to subparagraph (A) to summarize the latest annual report shall be written in a manner calculated to be understood by the average plan participant and shall set forth the total assets and liabilities of the plan for the plan year for which the latest annual report was filed and for each of the 2 preceding plan years, as reported in the annual report for each such plan year under this section.''.

(g) INFORMATION MADE AVAILABLE TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) (as amended by section 103(b)(2)(A)) is further amended—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

''(k) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

''(1) IN GENERAL.—Each administrator of a multiemployer plan shall furnish to any plan participant or beneficiary or any employer having an obligation to contribute to the plan, who so requests in writing—

''(A) a copy of any actuarial report received by the plan for any plan year which has been in receipt by the plan for at least 30 days, and

''(B) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary which has been in receipt by the plan for at least 30 days.

''(2) COMPLIANCE.—Information required to be provided under paragraph (1) —

''(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) (as amended by section 103(b)(2)(B)) is further amended by striking ''sections 101(j) and 302(b)(7)(F)(iv)'' and inserting ''sections 101(j), 101(k), and 302(b)(7)(F)(iv)''.

(3) REGULATIONS.—The Secretary shall prescribe regulations under section 101(k)(2) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1) of this subsection) not later than 90 days after the date of the enactment of this Act.

(h) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (g) of this section) is further amended—

(A) by redesignating subsection (l) as subsection (m); and

(B) by inserting after subsection (k) the following new subsection:

''(1) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

''(1) IN GENERAL.—The plan sponsor or administrator of a multiemployer plan shall furnish to any employer who has an obligation to contribute under the plan and who so requests in writing notice of—

''(A) the amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

''(B) the average increase, per participant under the plan, in accrued liabilities under the plan as of the end of such plan year to participants under such plan on whose behalf no employer contributions are payable (or their beneficiaries), which would be attributable to such a withdrawal by such employer.

For purposes of subparagraph (B), the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

''(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

''(A) shall be provided to the requesting employer within 180 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) (as amended by paragraph (1)) is further amended by striking ''sections 101(j), 101(k), and 302(b)(7)(F)(iv)'' and inserting ''sections 101(j), 101(k), 101(l), and 302(b)(7)(F)(iv)''.

(i) MODEL FORM.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model form for providing the statements, schedules, and other material required to be provided under section 104(b)(3) of the Employee

Retirement Income Security Act of 1974, as amended by this section.

(j) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.**

(a) CHANGE IN CRITERIA FOR PERSONS REQUIRED TO PROVIDE INFORMATION TO PBGC.—Section 4010(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310(b)) is amended by striking paragraph (1), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting before paragraph (3) (as so redesignated) the following new paragraphs:

''(1) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 60 percent;

''(2)(A) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 75 percent, and

''(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining;''.

(b) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

''(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

''(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

''(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

''(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and

''(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

''(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

''(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) VALUE OF PLAN ASSETS.—The term 'value of plan assets' means the value of plan assets, as determined under section 303(g)(3).

''(B) FUNDING TARGET.—The term 'funding target' has the meaning provided under section 303(d)(1).

''(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'funding target attainment percentage' has the meaning provided in section 303(d)(2).

''(D) AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.—The term 'aggregate funding targets attainment percentage' with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

''(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

''(E) AT-RISK STATUS.—The term 'at-risk status' has the meaning provided in section 303(i)(3).

''(3) COMPLIANCE.—

''(A) IN GENERAL.—Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.

''(B) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

''(4) NOTICE TO CONGRESS.—Concurrent with the provision of any notice under paragraph (1), such person shall provide such notice to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, which shall be treated as materials provided in executive session.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after December 31, 2006.

## TITLE VI—INVESTMENT ADVICE

**SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(b) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

''(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner

and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

''(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2006.

**SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions), as amended by this Act, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following new paragraph:

''(19) any transaction described in subsection (f)(10)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(10)(B) are met in connection with the provision of the advice.''.

(b) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(19), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(19)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary adviser in connection with the

provision of investment advice by the fiduciary adviser,

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(19) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(19)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2006.

## TITLE VII—BENEFIT ACCRUAL STANDARDS

### SEC. 701. BENEFIT ACCRUAL STANDARDS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) RULES RELATING TO REDUCTION IN RATE OF BENEFIT ACCRUAL.—Section 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)(H)) is amended by adding at the end the following new clauses:

''(vii)(I) A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

''(II) For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

''(III) In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

''(IV) In determining the entire accrued benefit for purposes of this clause, such benefit may be calculated as the present value of accrued benefits projected to normal retirement age, as an account balance, or as the current value of the accumulated percentage of the employee's final average compensation.

''(viii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, under the Railroad Retirement Act of 1974, under another plan described in section 401(a) of the Internal Revenue Code of 1986 maintained by the same employer, under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof, or under such other arrangements as the Secretary of the Treasury may provide. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

''(ix) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of the Internal Revenue Code of 1986 are met.

''(x)(I) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for indexing of accrued benefits under the plan.

''(II) Except in the case of any benefit provided in the form of a variable annuity, subclause (I) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

''(III) For purposes of this clause, the term 'indexing' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.''.

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—Section 203 of such Act (29 U.S.C. 1053) is amended by adding at the end the following new subsection:

''(f)(1) A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2), section 204(c) (but only in the case of a plan which does not provide for employee contributions), or section 205(g) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return.

''(2) The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of paragraph (1) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of paragraph (1).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) RULES RELATING TO REDUCTION IN RATE OF BENEFIT ACCRUAL.—Subparagraph (H) of section 411(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clauses:

''(vi) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

''(I) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

''(II) SIMILARLY SITUATED.—For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

''(III) DISREGARD OF SUBSIDIZED EARLY RETIREMENT BENEFITS.—In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

''(IV) ENTIRE ACCRUED BENEFIT.—In determining the entire accrued benefit for purposes of this clause, such benefit may be calculated as the present value of accrued benefits projected to normal retirement age, as an account balance, or as the current value of the accumulated percentage of the employee's final average compensation.

''(vii) CERTAIN OFFSETS PERMITTED.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, under the Railroad Retirement Act of 1974, under another plan described in section 401(a) maintained by the same employer, under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof, or under such other arrangements as the Secretary may provide. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

''(viii) PERMITTED DISPARITIES IN PLAN CONTRIBUTIONS OR BENEFITS.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) are met.

''(ix) INDEXING PERMITTED.—

''(I) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for indexing of accrued benefits under the plan.

''(II) PROTECTION OF ECONOMIC VALUE.—Except in the case of any benefit provided in the form of a variable annuity, subclause (I) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

''(III) INDEXING.—For purposes of this clause, the term 'indexing' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.''.

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—Subsection (a) of section 411 of such Code is amended by adding at the end the following new paragraph:

''(13) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—

''(A) IN GENERAL.—A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2), subsection (c) (but only in the case of a plan which does not provide for employee contributions), or section 417(e) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return.

''(B) REGULATIONS.—The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subparagraph (A) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subparagraph (A).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning on or after June 29, 2005.

## TITLE VIII—DEDUCTION LIMITATIONS

### SEC. 801. INCREASE IN DEDUCTION LIMITS.

(a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan'' after ''section 501(a),'', and

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

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

''(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

''(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

''(A) the greater of—

''(i) the sum of—

''(I) 150 percent of the funding target applicable to the plan for such plan year, determined under section 430, plus

''(II) the target normal cost applicable to the plan for such plan year, determined under section 430(b), or

''(ii) in the case of a plan that is not in an at-risk status (as determined under 430(i)), the sum of—

''(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), plus

''(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), over

''(B) the value of the plan assets (determined under section 430(g)).

''(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

''(4) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.''.

(b) INCREASE IN DEDUCTION LIMIT FOR MULTIEMPLOYER PLANS.—Section 404(a)(1)(D) of such Code is amended to read as follows:

''(D) MINIMUM DEDUCTION FOR MULTIEMPLOYER PLANS.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

''(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

''(ii) the value of the plan's assets determined under section 431(c)(2).''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

(A) by striking ''In the case of a plan'' and inserting ''In the case of a multiemployer plan'',

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

(C) by striking ''section 412(c)(7)(B)'' and inserting ''section 431(c)(6)(D)'',

(D) by striking ''section 412(c)(7)(A)'' and inserting ''section 431(c)(6)(A)'', and

(E) by striking ''section 412'' and inserting ''section 431''.

(3) Section 404(a)(1) of such Code is amended by striking subparagraph (F).

(4) Section 404(a)(7) of such Code is amended—

(A) in subparagraph (A)(ii), by striking ''for the plan year'' and all that follows and inserting ''which are multiemployer plans

for the plan year which ends with or within such taxable year (or for any prior plan year) and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year.'',

(B) by striking ''section 412(l)'' in the last sentence of subparagraph (A) and inserting ''paragraph (1)(D)(ii)'', and

(C) by striking subparagraph (D) and inserting:

''(D) INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.''.

(5) Section 404A(g)(3)(A) of such Code is amended by striking ''paragraphs (3) and (7) of section 412(c)'' and inserting ''sections 430(h)(1) and 431(c)(3) and (6)''.

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

**SEC. 802. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.**

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

''(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''.

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

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

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

## TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED CONTRIBUTION PLANS

**SEC. 901. PENSIONS AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS OF ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 MADE PERMANENT.**

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the provisions of, and amendments made by, subtitles (A) through (F) of title VI of such Act (relating to pension and individual retirement arrangement provisions).

**SEC. 902. SAVER'S CREDIT.**

(a) PERMANENCY.—Section 25B of the Internal Revenue Code of 1986 (relating to elective deferrals and IRA contributions by certain individuals) is amended by striking subsection (h).

(b) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—

(1) Section 25B of such Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

''(h) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—

''(1) IN GENERAL.—So much of any overpayment under section 6401(b) as does not exceed the amount allowed as a tax credit under subsection (a) shall, at the election of the taxpayer, be paid on behalf of the individual taxpayer to an applicable retirement plan designated by the individual, except that in the case of a joint return, each spouse shall be entitled to designate an applicable retirement plan with respect to payments attributable to such spouse.

''(2) APPLICABLE RETIREMENT PLAN.—For purposes of this subsection, the term 'applicable retirement plan' means any eligible retirement plan (as defined in section 402(c)(8)(B)) that elects to accept deposits under this subsection.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 2006.

**SEC. 903. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.**

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

''(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

''(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term 'qualified automatic contribution arrangement' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (F).

''(C) AUTOMATIC DEFERRAL.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

''(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

''(I) to not have such contributions made, or

''(II) to make elective contributions at a level specified in such affirmative election.

''(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term 'qualified percentage' means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

''(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

''(II) 4 percent during the first plan year following the plan year described in subclause (I),

''(III) 5 percent during the second plan year following the plan year described in subclause (I), and

''(IV) 6 percent during any subsequent plan year.

''(iv) AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.—Clause (i) shall be applied without taking into account any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause).

''(D) PARTICIPATION.—

''(i) IN GENERAL.—An arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of the employees eligible to participate in the arrangement other than—

''(I) highly compensated employees, and

''(II) at the election of the plan administrator, employees described in subparagraph (C)(iv).

''(ii) FIRST PLAN YEAR.—An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year with respect to which such arrangement is a qualified automatic contribution arrangement (determined without regard to this subparagraph).

''(E) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

''(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 6 percent of compensation, or

''(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

''(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

''(iii) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

''(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

''(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

''(iv) APPLICATION OF CERTAIN OTHER RULES.—The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

''(F) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

''(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

''(ii) TIMING AND CONTENT REQUIREMENTS.—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

''(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

''(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

''(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.''.

(b) MATCHING CONTRIBUTIONS.—Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

''(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

''(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

''(B) meets the requirements of paragraph (11)(B).''.

(c) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(1) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting ''or 401(k)(13)'' after ''section 401(k)(12)''.

(2) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting ''or 401(m)(12)'' after ''section 401(m)(11)''.

(d) CORRECTIVE DISTRIBUTIONS.—

(1) IN GENERAL.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

''(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

''(1) IN GENERAL.—No tax shall be imposed under section 72(t) on a distribution from an applicable employer plan to the employee with respect to whom such contribution relates if such distribution does not exceed the erroneous automatic contribution amount and is made not later than the 1st April 15 following the close of the taxable year in which such contribution was made.

''(2) ERRONEOUS AUTOMATIC CONTRIBUTION AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'erroneous automatic contribution amount' means the lesser of—

''(i) the amount of automatic contributions made during the applicable period which the employee elects in a notice to the plan administrator to treat as an erroneous automatic contribution amount for purposes of this subsection, or

''(ii) $500.

''(B) AUTOMATIC CONTRIBUTION.—The term 'automatic contribution' means contributions which, under the terms of the plan—

''(i) the employee can elect to be made as contributions under the plan on behalf of the employee, or to the employee directly in cash, and

''(ii) which are made on behalf of the employee under the plan pursuant to a plan provision treating the employee as having elected to have the employer make such contributions on behalf of the employee until the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions as a specified level.

''(3) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term 'applicable employer plan'means—

''(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

''(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b), and

''(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).

''(4) APPLICABLE PERIOD.—For purposes of this subsection, the term 'applicable period' means, with respect to any employee, the three month period that begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to such employee.

''(5) SPECIAL RULES.—A distribution described in paragraph (1) (subject to the limitation of paragraph (2))—

''(A) shall not be treated as a distribution for purposes of sections 401(k)(2)(B)(i), 403(b)(7), 403(b)(11), and 457(d)(1)(A), and

''(B) shall not be taken into account for purposes of section 401(k)(3).''.

(2) VESTING CONFORMING AMENDMENTS.—

(A) Section 411(a)(3)(G) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(B) The heading of section 411(a)(3)(G) of such Code is amended by inserting ''OR ERRONEOUS AUTOMATIC CONTRIBUTION'' before the period.

(C) Section 401(k)(8)(E) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(D) The heading of section 401(k)(8)(E) of such Code is amended by inserting ''OR ERRONEOUS AUTOMATIC CONTRIBUTION'' before the period.

(E) Section 203(a)(3)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(F)) is amended by inserting ''an erroneous automatic contribution under section 414(w) of such Code,'' after ''402(g)(2)(A) of such Code,''.

(e) CONTROL OVER PLAN ASSETS DEEMED TO HAVE BEEN EXERCISED WITH RESPECT TO DEFAULT INVESTMENT ARRANGEMENTS.—Section 404(c) of the Employee Retirement Income Security Act of 1974, as amended by section 308, is further amended by adding at the end the following new paragraph:

''(5)(A) For purposes of paragraph (1), a participant in an individual account plan shall be treated as exercising control over the assets in the account with respect to the amount of contributions made under a default investment arrangement.

''(B)(i) For purposes of this paragraph, the term 'default investment arrangement' means an arrangement—

''(I) which meets the requirements of subparagraph (C),

''(II) under which the participant is treated as having elected to have the plan sponsor exercise control over the assets in the participant's account until the participant specifically elects to exercise such control, and

''(III) under which assets described in subclause (II) are invested in accordance with regulations prescribed by the Secretary.

''(ii) The regulations prescribed pursuant to clause (i)(III) shall provide guidance on the appropriateness of certain investments for designation as default investments under the arrangement, which shall include guidance regarding—

''(I) appropriate mixes of default investments and asset classes which the Secretary considers consistent with long-term capital appreciation, and

''(II) the designation of other default investments.

''(C)(i) For purposes of subparagraph (B)(i)(I), an arrangement meets the requirements of this subparagraph for any plan year if, within a reasonable period before such plan year, the plan administrator gives to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

''(I) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

''(II) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

''(ii) A notice shall not be treated as meeting the requirements of clause (i) with respect to a participant unless—

''(I) the notice includes an explanation of the participant's right under the arrangement to specifically elect to exercise control over the assets in the participant's account,

''(II) the employee has a reasonable period of time, after receipt of the notice described in subclause (I) and before the assets are first invested, to specifically make such an election, and

''(III) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election specifically made by the employee.''.

(f) PREEMPTION OF CONFLICTING STATE REGULATION.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) is amended by adding at the end the following new subsection:

''(e)(1) Notwithstanding any other provision of this section, this title shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

''(2)(A) For purposes of this subsection, the term 'automatic contribution arrangement' means an arrangement—

''(i) which meets the requirements of paragraph (3),

''(ii) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

''(iii) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

''(iv) under which such contributions are invested in accordance with regulations prescribed by the Secretary.

''(B) The regulations prescribed pursuant to subparagraph (A)(iv) shall provide guidance on the appropriateness of certain investments for designation as default investments under the arrangement, which shall include guidance regarding appropriate mixes of default investments and asset classes which the Secretary considers consistent with long-term capital appreciation

''(3)(A) For purposes of paragraph (2)(A)(i), an arrangement meets the requirements of this paragraph for any plan year if, within a reasonable period before such plan year, the plan administrator gives to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

''(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

''(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

''(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

''(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 904. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

''(i) IN GENERAL.—Any qualified reservist distribution.

''(ii) AMOUNT DISTRIBUTED MAY BE REPAID.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

''(iii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified reservist distribution' means any distribution to an individual if—

''(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

''(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

''(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2-years after the date of the enactment of this subparagraph.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of such Code is amended by striking ''or'' at the end of subclause (III), by striking ''and'' at the end of subclause (IV) and inserting ''or'', and by inserting after subclause (IV) the following new subclause:

''(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and''.

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

(3) Section 403(b)(11) of such Code is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) for distributions to which section 72(t)(2)(G) applies.''.

(c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

**SEC. 905. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.**

(a) IN GENERAL.—Section 72(t)(2) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions), as amended by section 904, is amended by adding at the end the following new subsection:

''(H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

''(i) IN GENERAL.—Distributions to an individual who is a qualified public safety employee from a governmental plan within the meaning of section 414(d) to the extent such distributions are attributable to a DROP benefit.

''(ii) DEFINITIONS.—For purposes of this subparagraph—

''(I) DROP BENEFIT.—The term 'DROP benefit' means a feature of a governmental plan which is a defined benefit plan and under which an employee elects to receive credits to an account (including a notional account) in the plan which are not in excess of the plan benefits (payable in the form of an annuity) that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee's accrued pension benefit based on years of service after the effective date of the DROP election.

''(II) QUALIFIED PUBLIC SAFETY EMPLOYEE.—The term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision and if the employee was eligible to retire on or before the date of such election and receive immediate retirement benefits.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

**SEC. 906. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING LIMITATION AND DEDUCTIBILITY OF CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) SPECIAL RULE FOR COMPENSATION EARNED BY MEMBERS OF THE ARMED FORCES FOR SERVICE IN A COMBAT ZONE.—For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.''.

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

**SEC. 907. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.

**SEC. 908. IRA ELIGIBILITY FOR THE DISABLED.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 (relating to other definitions and special rules), as amended by this Act, is further amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) SPECIAL RULE FOR CERTAIN DISABLED INDIVIDUALS.—In the case of an individual—

''(A) who is disabled (within the meaning of section 72(m)(7)), and

''(B) who has not attained the applicable age (as defined in section 401(a)(9)(H)) before the close of the taxable year,

subparagraph (B) of subsection (b)(1) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

**SEC. 909. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.**

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

''(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

''(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

''(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

''(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

''(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

''(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.''.

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting ''and (11)'' after ''(7)''.

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

## TITLE X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

### SEC. 1001. TREATMENT OF ANNUITY AND LIFE INSURANCE CONTRACTS WITH A LONG-TERM CARE INSURANCE FEATURE.

(a) EXCLUSION FROM GROSS INCOME.—Subsection (e) of section 72 of the Internal Revenue Code of 1986 (relating to amounts not received as annuities) is amended by redesignating paragraph (11) as paragraph (12) and by inserting after paragraph (10) the following new paragraph:

''(11) SPECIAL RULES FOR CERTAIN COMBINATION CONTRACTS PROVIDING LONG-TERM CARE INSURANCE.—Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

''(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

''(B) such charge shall not be includible in gross income.''.

(b) TAX-FREE EXCHANGES AMONG CERTAIN INSURANCE POLICIES.—

(1) ANNUITY CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (2) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(2) LIFE INSURANCE CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (3) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(3) EXPANSION OF TAX-FREE EXCHANGES OF LIFE INSURANCE, ENDOWMENT, AND ANNUITY CONTRACTS FOR LONG-TERM CARE CONTRACTS.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended—

(A) in paragraph (1) by striking ''contract;'' and inserting ''contract or for a qualified long-term care insurance contract;'',

(B) in paragraph (2) by striking ''contract;'' and inserting ''contract, or (C) for a qualified long-term care insurance contract;'', and

(C) in paragraph (3) by striking ''contract.'' and inserting ''contract or for a qualified long-term care insurance contract.''.

(4) TAX-FREE EXCHANGES OF QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended by striking ''or'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; or'', and by inserting after paragraph (3) the following new paragraph:

''(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.''.

(c) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Subsection (e) of section 7702B of such Code (relating to treatment of qualified long-term care insurance) is amended to read as follows:

''(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

''(1) COVERAGE TREATED AS CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract, this title shall apply as if the portion of the contract providing such coverage is a separate contract.

''(2) DENIAL OF DEDUCTION UNDER SECTION 213.—No deduction shall be allowed under section 213(a) for any payment made for coverage under a qualified long-term care insurance contract if such payment is made as a charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract.

''(3) APPLICATION OF SECTION 7702.—Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to the life insurance contract, as of any date—

''(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for coverage under the qualified long-term care insurance contract made to that date under the life insurance contract, less

''(B) any such charges the imposition of which reduces the premiums paid for the life insurance contract (within the meaning of section 7702(f)(1)).

''(4) PORTION DEFINED.—For purposes of this subsection, the term 'portion' means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

''(5) ANNUITY CONTRACTS TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of this subsection, none of the following shall be treated as an annuity contract:

''(A) A trust described in section 401(a) which is exempt from tax under section 501(a).

''(B) A contract—

''(i) purchased by a trust described in subparagraph (A),

''(ii) purchased as part of a plan described in section 403(a),

''(iii) described in section 403(b),

''(iv) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

''(v) from an individual retirement account or an individual retirement annuity.

''(C) A contract purchased by an employer for the benefit of the employee (or the employee's spouse).

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this paragraph, be treated as paid under a separate contract to which subparagraph (B)(i) applies.''.

(d) INFORMATION REPORTING.—

(1) Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

### ''SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS UNDER COMBINED ARRANGEMENTS.

''(a) REQUIREMENT OF REPORTING.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(e)(11) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

''(1) the amount of the aggregate of such charges against each such contract for the calendar year,

''(2) the amount of the reduction in the investment in each such contract by reason of such charges, and

''(3) the name, address, and TIN of the individual who is the holder of each such contract.

''(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person making the payments, and

''(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.''.

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of such chapter 61 of such Code is amended by adding at the end the following new item:

''Sec. 6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements.''.

(e) TREATMENT OF POLICY ACQUISITION EXPENSES.—Subsection (e) of section 848 of such Code (relating to classification of contracts) is amended by adding at the end the following new paragraph:

''(6) TREATMENT OF CERTAIN QUALIFIED LONG-TERM CARE INSURANCE CONTRACT ARRANGEMENTS.—An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).''.

(f) TREATMENT AS QUALIFIED ADDITIONAL BENEFIT.—Subparagraph (A) of section 7702(f)(5) of such Code (relating to qualified additional benefits) is amended by striking ''or'' at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

''(v) qualified long-term care insurance contract which is a part of or a rider on the contract, or''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to exchanges occurring after December 31, 2006.

**SEC. 1002. DISPOSITION OF UNUSED HEALTH AND DEPENDENT CARE BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.**

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH AND DEPENDENT CARE BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because under such plan qualified benefits include—

''(A) a health flexible spending arrangement under which not more than $500 of unused benefits under such arrangement may be—

''(i) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(ii) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee, and

''(B) a dependent care flexible spending arrangement under which not more than $500 of unused benefits under such arrangement may be carried forward to the succeeding plan year of such dependent care flexible spending arrangement.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'dependent care flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for dependent care assistance which meets the requirements of section 129(d).

''(4) UNUSED BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement or the dependent care flexible spending arrangement, as the case may be, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

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

**SEC. 1003. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.**

(a) IN GENERAL.—Section 402 of the Internal Revenue Code of 1986 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new subsection:

''(l) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—

''(1) IN GENERAL.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.

''(2) LIMITATION.—The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $5,000.

''(3) DISTRIBUTIONS MUST OTHERWISE BE INCLUDIBLE.—

''(A) IN GENERAL.—An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

''(B) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) ELIGIBLE RETIREMENT PLAN.—For purposes of paragraph (1), the term 'eligible retirement plan' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

''(B) ELIGIBLE RETIRED PUBLIC SAFETY OFFICER.—The term 'eligible retired public safety officer' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

''(C) PUBLIC SAFETY OFFICER.—The term 'public safety officer' shall have the same meaning given such term by section 1204(8)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(8)(A)).

''(D) QUALIFIED HEALTH INSURANCE PREMIUMS.—The term 'qualified health insurance premiums' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

''(5) SPECIAL RULES.—For purposes of this subsection—

''(A) DIRECT PAYMENT TO INSURER REQUIRED.—Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

''(B) RELATED PLANS TREATED AS 1.—All eligible retirement plans of an employer shall be treated as a single plan.

''(6) ELECTION DESCRIBED.—

''(A) IN GENERAL.—For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

''(B) SPECIAL RULE.—A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

''(7) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

''(8) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(a) of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(2) Section 403(b) of such Code (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(3) Section 457(a) of such Code (relating to year of inclusion in gross income) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.''.

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

## TITLE XI—GENERAL PROVISIONS

**SEC. 1101. PROVISIONS RELATING TO PLAN AMENDMENTS.**

(a) IN GENERAL.—If this section applies to any pension plan or contract amendment—

(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2008.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting ''2010'' for ''2008''.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BOEHNER), the gentleman from California (Mr. GEORGE MILLER), the gentleman from Michigan (Mr. CAMP), and the gentleman from New York (Mr. RANGEL) each will control 22½ minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. BOEHNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2830.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I will put this as bluntly as I can: our Nation's pension laws are outdated and broken and placing at risk the retirement security of millions of American workers. Today, we have an opportunity to change this by voting for the most comprehensive reforms to worker pension laws in more than a generation.

The Pension Protection Act is the outcome of one of the most thorough and remarkable legislative processes I have seen during my years in the House. On June 4, 2003, the Committee on Education and the Workforce held the first of nearly a dozen hearings on traditional pension plans, and from these hearings they have covered a broad set of issues, ranging from what is broken to who it has impacted to how we should go about fixing it. And, today, we stand ready to debate and vote on the product of those 30 months of deliberations.

There are three key strengths of this bill, and I would like to highlight each of those for my colleagues. It is a balanced approach, it is comprehensive in nature, and it is a benefit to American taxpayers.

First, the bill's greatest strength is its balanced approach to the pension crisis that we face. While some are calling for suffocating pension funding rules which would place an incredible burden on employers who voluntarily offer retirement benefits, our bill makes certain not to tighten the rules so much that employers leave the defined benefit system altogether.

While others call for relaxation of pension rules, our bill ensures that employers and unions keep their promises to workers and retirees who are counting on their pension benefits. In short, our bill aims to shore up the traditional defined benefit pension system to which we and our parents have grown accustomed so our children and grandchildren might have a chance to be part of it as well.

The second major strength of the Pension Protection Act is inherently comprehensive in nature. As you can see on the chart that is next to me, the measure would ensure that pensions are fully funded to restore worker and retiree confidence; it has enhanced disclosure requirements so that workers and retirees are no longer kept in the dark about the health of their pensions; it would improve the financial condition of the Federal agency charged with ensuring some 30,000 private pension plans; it would reform outdated laws that deny workers access to professional and secure investment advice while providing even more workers with 401(k)-type plans; and it would end sweetheart deals like those we have seen at some airlines and other corporations that have terminated their plans in which executives enjoy a windfall of cash while workers and retirees are left wondering about their futures.

Incidentally, these five reforms are only the tip of the iceberg. There is much more that this bill offers to workers and retirees, far more than this chart could ever tell us.

Finally, yet another strength of this measure is its benefit to American taxpayers. Each of us remembers all too well the savings & loan bailout of more than a decade ago. By enacting the Pension Protection Act, we can be more confident that history will not repeat itself with regard to our pension system.

As you can see on this second chart, the Pension Benefit Guaranty Corporation, which ensures nearly 30,000 private worker pensions, is in dire financial condition. With some $450 billion in pension plan underfunding among financially weak companies looming on the horizon, the PBGC's debt could balloon even further than its current $23 billion.

Even though no taxpayer funds fund the Pension Benefit Guaranty Corporation, could American taxpayers be called upon to bail out the agency if its financial condition continues to deteriorate? I think so. That is why the Pension Protection Act includes responsible increases to employer-paid premiums for the first time since 1991, along with substantial reforms to place the defined benefit system on more solid ground. For taxpayers who may be left holding the bag otherwise, I think this is good news.

Madam Speaker, throughout this process I have made every effort to include my colleagues on both sides of the aisle. And even after my Democratic friends voted ''present,'' that is right, they did not vote ''no,'' they voted ''present,'' when our committee approved the bill back in June, I was hopeful that they would join us and the ever-growing coalition of labor and employer groups in support of these reforms.

However, some of my colleagues have offered nothing more than rhetoric based on quirky accounting schemes and purposely skewed modeling in an effort to characterize the Pension Protection Act in a negative manner. I expect these hollow and misleading arguments will continue today as they seek to detract from a debate which they have largely been absent from for the last 30 months. It is my sincere hope, however, that many of my Democrat colleagues will look beyond the rhetoric and support these long-overdue reforms. This bill definitely deserves bipartisan support.

Madam Speaker, the Pension Protection Act would not be before us if it were not for the work of my friend, the chairman of the Ways and Means Committee, Mr. THOMAS; the Employer-Employee Relations Subcommittee chair and vice chair, Mr. JOHNSON and Mr. KLINE; my friend from Ohio, Mr. TIBERI, a committee colleague who worked tirelessly to garner support for the bill; and all of the others on my committee and throughout the House who understand how imperative it is to reform our Nation's outdated pension laws for the benefit of workers, retirees, and taxpayers alike. I thank them for their efforts to bring this bill to the floor.

Madam Speaker, I reserve the balance of my time.

Mr. RANGEL. Madam Speaker, I yield myself such time as I may consume.

My colleagues, I do not know how the majority gets away with what they do. I do not think that their legislative initiatives are just for the legislation, but rather to do away with traditions that have existed under Democrat administrations.

If you have an immigration problem, lock up the immigrants and lock up the employers. If you have a health problem, then get rid of Medicaid and Medicare and let the private sector resolve the problems. If you have a prescription drug problem and you want to subsidize that and help out the older people, do not let the Federal Government do it. Give the money to the private sector; let them compete and let them do it. The Social Security system, if people have relied on their government when they get older or disabled, do not let the government be involved. Get some private accounts and let them do it.

Now we are talking about how well the economy is doing: plants are closing; people are fearful of losing their jobs; pension plans are going busted; and, really, people do not feel nearly as good as the Republicans and the President think.

Now we have a bill before us where these pension plans would be a heck of a lot better if we did nothing, rather than do the harm that we are about to do to them. The demands that are going to be made on employers to reach sometimes the increase of 240 percent in making contributions to these plans will cause many of them to drop the plan and go into bankruptcy. The whole idea of how much revenue we are going to lose, some $70 billion, is not even an issue, if at the end of the day enough sweetheart nips and tucks were given to a handful of people so that we would be assured that the days of defined benefit pensions are just about over.

Some people will have to make political choices today in terms of support of this because there are some vested interest people that need short-gain satisfaction. But at the end of the day, the same way people regret their votes for the Gulf of Tonkin Resolution, they will have to come back and ask did they do more damage than good on today. If you look at actuaries and people who have studied this, they realize that so few pensions are now protected by the PBGC, and in the future many less will be protected.

So, Madam Speaker, these bills are not brought up just to become law. Many of the bills that are coming to this floor are brought to see which people are going to vote against the title of the bill and pay a price for that at the polls, or whether some are secure enough to vote against the substance of the bill that in the long term is going to adversely affect our workers.

At this time with the House permission, I would like to turn the balance of my time over to Congressman BEN CARDIN from Maryland who has spent a lot of time on pensions and can share with the House the pitfalls that we have in this bill before the House today.

I yield the balance of my time to Congressman CARDIN.

The SPEAKER pro tempore. Without objection, the gentleman from Maryland will control the balance of the time.

There was no objection.

□ 1330

Mr. BOEHNER. Madam Speaker, I yield 4 minutes to the gentleman from Texas (Mr. SAM JOHNSON), the chairman of the Employer-Employee Subcommittee of the Education and Workforce Committee.

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Madam Speaker, I have the honor of chairing a subcommittee that has jurisdiction over pension law and being an original sponsor of the Pension Protection Act. As a member of both the Committee on Education and the Workforce and the Ways and Means Committee, we have been working for the last 2 years to get a pension bill to the House floor, and I am proud to rise in strong support of the bill.

The Pension Protection Act is good and it is tough. Our bill makes companies put their money behind their promises and keep employees well informed on the health of their pension plans.

While this bill is tough, it does not go overboard with more red tape that has almost killed traditional pension plans. Even with all the red tape that currently binds up these pension plans, there still are some loopholes in current law that have allowed companies to run away from their responsibilities and dump pension promises onto the Pension Benefit Guaranty Corporation.

The PBGC says it is $23 billion in the hole, and they say that, with expected terminations, they are close to $28 billion. Our bill will tighten up pension laws so that companies making promises to employees for their retirement security actually put the money behind their promises.

It is a shame our pension laws have allowed those most directly affected, workers and retirees, to be left unaware that there may be little money behind the promises of a secure retirement. United Airlines' pilots' pension plan was only 30 percent funded when it was dumped on the government. Those pilots and their families did not know how bad the situation was, and they are the ones that are now trying to figure out how to live on one-third of what they had planned to receive.

Our bill requires a company to tell their employees if the pension plan is less than 80 percent funded. Employees will now push their bosses to put money into the plans to match the promises being made. This is a really important reform and should not be minimized.

Also, not to be underestimated is a provision that will allow for a phased retirement of older workers. The provision would allow people to continue working, but also collect their employer-based pension after the age of 62. Current rules prohibit working for the same employer while also collecting a pension today. This prohibition simply forces many people to change jobs or work for a competitor or stop working altogether. My constituents have been really happy to hear about this additional way to step lightly into retirement.

The bill also helps to modernize the pension law on cash balance pension plans. This type of pension plan represents the best chance we have at maintaining defined benefit plans in the future. Cash balance plans are a better fit than traditional plans with today's mobile workforce where employees generally do not stay with one employer for their entire career. The bill clarifies that in the future these plans are not age discriminatory. We need to provide this certainty. In fact, we should go further in providing certainty for plans regardless of when they were created, but because of litigation we cannot.

We need to get this bill through the House and on to conference with the Senate and quickly enacted early next year. The number of traditional pension plans has been declining rapidly. The companies dropping these plans are in two groups. The first group is those that do not put their money behind their pension promises and turn their liabilities over to the government. We have seen that in the steel and airline industries.

The second group is companies that are just sick of the red tape and uncertainty of our laws so they decide to stop offering plans altogether, like Verizon announced last week.

In the many hearings on pension issues we have heard over and over again that companies need predictability and stability in their plans. We need to get this bill enacted so that companies put their money behind their promises so they can plan with certainty in the long term. Support this bill.

Mr. CARDIN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, the objective of this legislation should be to encourage the retention and expansion of traditional defined benefit plans. Traditional defined benefit plans generally offer a guaranteed benefit to the worker and, they are generally well managed and diversified. The passage of this bill, in my view, will set up a conference report that will come back to us that will accelerate the termination of well-funded and managed traditional defined benefit plans. And I say that for three reasons.

Three parts of this legislation will adversely affect well-funded and managed plans. First, the funding roles are more costly and more restrictive. That in and of itself will act as a disincentive for continuation of these plans.

Second, there is a failure to include relief for the airline industry, clearly putting pressure on well-funded and managed plans to pick up the costs for other industries, questioning whether they should stay and provide these plans.

Third, we continue to allow companies to go into bankruptcy in order to dump their costs onto the PBGC, once again affecting those well-funded plans that are going to be asked to pick up the tab.

For all these reasons this legislation is likely to accelerate the termination of plans that we would want to see continued. The termination of these plans will just adversely affect the funding of the PBGC, the guaranteed fund, complicating the situation and making it worse.

Madam Speaker, I want to point out that there are provisions in this legislation that are very good. The provisions dealing with the defined contribution provisions are needed and, as it was pointed out in the Ways and Means Committee, contain many of the provisions that were worked on through the Portman-Cardin process as

well as legislation presented by Mr. EMANUEL and Mr. POMEROY. It includes automatic enrollment, the split refunds where tax refunds can go partially into retirement savings, the extension of the savers credit, the ability for individuals to roll over funds and keep them in retirement funds longer.

All of those are positive aspects. However, when you look at this bill in balance, we do need to pass legislation; but on balance this legislation will cause more harm than good, and I urge my colleagues to reject the bill.

Madam Speaker, I reserve the balance of my time.

Mr. BOEHNER. Madam Speaker, I yield 2 minutes to the gentleman from California (Mr. MCKEON), the chairman of the 21st Century Competitiveness Subcommittee.

Mr. MCKEON. Madam Speaker, I rise in strong support of H.R. 2830, and I thank Chairmen BOEHNER and THOMAS and JOHNSON for their great work in getting us to this point.

This bill represents a responsible approach that will protect the retirement benefits of millions of American workers and help ensure that their pension benefits will be there when they retire.

In recent years, our important retirement security system has come under strain from the increased aging of the workforce and from dishonest employers who made promises they could not keep. Many workers and retirees have been misled into believing that they will have a secure retirement only to see their pension plan terminated due to plan underfunding.

This bill includes reforms to ensure employers more accurately measure and fund their short-term and long-term pension promises. It includes tough new funding requirements to ensure plans are adequately and consistently funded, and it provides meaningful disclosure provisions about the financial status of pension benefits.

In addition, this bill is important to protect taxpayers from a multibillion dollar bail-out of the Pension Benefit Guaranty Corporation. When the PBGC cannot pay benefit for plans where they have assumed planned liabilities, taxpayers are on the hook for the difference. In fact, in November the Pension Benefit Guaranty Corporation reported a long-term liability deficit of $22.8 billion. That is billion with a B.

The Pension Protection Act will reasonably increase employer-paid premiums to help shore up the PBGC and protect taxpayers from this potentially large liability.

This bill contains commonsense reforms that will help protect the pensions of millions of Americans; and this bill is supported by a broad array of unions, employers, and other organizations. Passage of the Pension Protection Act is important to the retirement security of millions of Americans, and it is important to help protect taxpayers from an expensive bail-out.

I strongly urge my colleagues to support this bill.

Mr. GEORGE MILLER of California. Madam Speaker, I yield myself 5 minutes.

Madam Speaker, when we are starting to deal with the pension plans that protect America's retirements, one of the things we should do is to make a decision not to do any harm. But the fact of the matter is that this bill makes things worse in many ways for many pensioners in this country and many future pensioners.

First and foremost, we created the Pension Benefit Guaranty Corporation to be there to protect some of the retiree benefits of people if pension plans went bust or the corporations went bust. We are now told that this legislation makes that problem worse.

The speaker who was just in the well said there was some $23 billion in deficit in that plan. And what we now see is a Pension Benefit Guaranty Corporation, the Congressional Budget Office tells us that this makes it at least $9 billion worse over the next decade. So while we narrow the deficit, in fact we see that we increase this agency's deficit problems.

This is an agency that can look out into the future and can see up to $100 billion of liabilities possibly coming their way. Maybe some of them will not come because of this bill, but many of them will come because of this bill, because this bill, in fact, makes it easier, makes it easier to terminate plans. It makes it easier to put plans into bankruptcy. It certainly does not make it any more difficult to put into bankruptcy as we saw with United Airlines.

So what does that mean? That means that a plan that was designed, an insurance policy that was designed for when companies went out of business, now companies can take their pension plans, the retirement nest eggs of their workers, and put them into bankruptcy, and the company can go merrily on its way. I do not choose that term lightly, ''merrily on its way,'' because after what we saw after years and decades of manipulating the pension plans of United Airlines, about not being truthful with the employees, not being truthful with the public, not being truthful with the shareholders about their liabilities, they put them into bankruptcy. Those workers had given back billions of dollars in wage concessions, retirement concessions to try to keep that airline afloat. They were not able to because they went into bankruptcy.

Yesterday, we learned that the top executives of that corporation have now petitioned the court to distribute $235 million in stock to those very same executives that ran this corporation into the ground, that they are going to get $235 million in stock. The employees who had all of the concessions, all of the cutbacks, the employees are going to be required to service, maintain, run and staff those airlines, start all over, having fallen and been cast to the floor.

That is what is wrong with this legislation. It treats those in the corporate suites entirely differently than it takes care of the workers on the shop floor or on the airlines or in the repair facilities. That is the problem with it is that we see that this plan simply does not provide the kinds of protections necessary, the kinds of protections that are necessary for those employees who have worked so terribly long for those corporations, who invested their entire lives in these corporations.

Plus the fact that it also makes it, and we are told by a number of the employer groups, this is what makes it more likely that the companies will terminate their plans, that they will freeze their plans. What does that mean? That means a lots of people who may be 50, 55 years old today, just as we found out with the cash balance plans, this makes it easier to do a cash balance, a lot of people who are working today are going to find out that they will not have a retirement nest egg that they have been planning on. They will not be able to carry out the standard of living that they were anticipating to provide for their families.

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That is what this legislation does. It makes those kinds of decisions much easier, much easier for the companies to do that.

What does that mean? That means that America is going to end up with a poorer retired population than they had before. That means that these people are going to have less of the kind of retirement that they had anticipated because of the acceleration of the terminations, because of the acceleration of the freezing of the plans and because of the ease which you can now go and apparently the acceptability in the business community of entering bankruptcy.

We changed the personal bankruptcy laws in this Congress because we said people were using it as a convenience. It is interesting now that the corporations have decided they will use it as a convenience to redesign themselves, to reconfigure themselves, to reinvent themselves. If United Airlines is the model, the only losers will be the workers and the retirees in those corporations.

That is what this legislation does not do. It does not really speak to trying to make sure that we could do all that we can to secure the retirement of current workers and of future retirees.

I would urge my colleagues to vote against this legislation when we get to that vote and understand that we should not be making the problems of America's pensioners even worse than they are today.

Madam Speaker, we are facing a serious pension crisis that has already cost employees across the Nation billions of dollars in lost benefits—benefits they were told were iron-clad. If you calculate just the losses employees suffered in the Nation's four largest pension terminations it exceeds $6 billion in earned defined benefit promises.

Let's be clear what is happening to our retirement system—this Enron the sequel. This

is Enron 2 with a vengeance. This is a national disgrace.

This bill does absolutely nothing about companies who decide to use the Federal Government to dump and run on their promises to employees. Exploiting loopholes in our pension and bankruptcy laws, clever lawyers have turned a Federal agency that was supposed to be a last resort for companies that were closing shop, into a dumping ground for companies to ditch unwanted promises to reward investors at the expense of employees and taxpayers. So powerful is this gaping hole in our pension protections, companies can now exact major wage and benefit concession by merely threatening to terminate their pension plan.

Folks, if you want help fast forward to the new Wal-Mart economy—this is your bill. If you want to further weaken employees' hand in the battle for fair wages and benefits, this is your bill. If you want to stand by and watch as companies freeze, downgrade or drop their pension plans, this is your bill.

Last summer thousands of United Airline employees—mechanics, flight attendants, and pilots—lost billions in irreplaceable pension savings that changed their lives forever. These families—denied the courtesy of even a single hearing before the Education and Workforce Committee—participated in an online hearing Democrats sponsored. Over 1,000 participated in this unique online hearing and their powerful voices were heard.

They wrote to us about the personal and financial devastation resulting from the loss of promised benefits, and the lost opportunity to earn future benefits. Listen to Kenneth Schmidt, a long-time employee of United from Goodyear, AZ, who wrote:

Dear Congressmen,

I had worked for United for 38 years when I retired in February of 2003. My job as a mechanic was always a source of pride to me. I worked midnights for many years, with doing so I missed out on many family gatherings, holidays, etc. This was what I chose to do in life, and I did it with no complaints. But, now I am faced with large cuts to my retirement benefits. My retirement should be a time of taking it easy, traveling, and enjoying my ''Golden Years''. If this cut happens both my wife and I will be forced to reenter the work world, probably full time, if our medical insurance is also affected. This is a sad time in this country for all the workers who are relying on a pension to ease their lives, and make this time relaxing, and enjoyable. The stress that is being created by this turn in events is not healthy for anyone. Please try and help all retirees, and future retirees out of this most unfortunate set of troubles.

Guess what this bill says to Kenneth Schmidt and the millions of future Ken Schmidt's who have suffered from broken pension promises: Too bad, tough luck. You're on your own.

How can it be that tens of thousand of United Airlines employees like Ken Schmidt lose billions of dollars in promise benefits, and we do nothing? For example, we all know that United Airlines was permitted to terminate its flight attendants plans without ever having to show it was necessary to continue operating the company. The plan was terminated despite the testimony of a government hired economist who concluded the United plan was affordable and should be continued. This bill does nothing for them. The Democratic substitute—denied by the Republican leadership—would have restored the United plan until the company showed it couldn't afford it.

This bill does nothing for thousands of pilots whose benefits are cut by half or more by the Federal Government when a plan is terminated. When a plan is taken over by the PBGC after termination by its sponsor, the PBGC is required by law to impose a heavy penalty of those who retire at age 60—even airline pilots who are forced to retire at age 60 under Federal law. Our substitute fixes this injustice and allows pilots to get the same maximum PBGC benefit other workers receive.

H.R. 2830 rejects the Senate bill provisions that provide urgent relief to companies like Delta and Northwest airlines so these companies don't terminate their plans. Our Democratic substitute includes this urgently needed relief.

If you want to let the hard-earned pensions of airline employees across the Nation crumble into a heap of broken promises like United and USAirways, this is your bill.

Mr. Chairman, the sponsors of H.R. 2830 have referred to it as a ''pension reform bill.'' They say it will reform the Pension Benefits Guaranty Corporation that's already $23 billion in the red and going up. And they say it will turn around $450 billion in underfunding reported by the Nation's pension plans. In truth, this bill not only fails to tackle pension reform, it actually hastens the unraveling of the PBGC and defined benefit plans. Here is what the Congressional Budget Office says about this bill: ''H.R. 2830 would actually increase the PBGC's 10 year net costs by $9 billion, or by about 14 percent compared to with what it would be under current policy.'' The PBGC found the same—that H.R. 2830 would mean billions more red ink to its agency over current law.

How can a bill be reforming a system if it is increasing the PBGC's red ink over current law? It can't, and that's why this bill is a sham.

This bill also repeals two long-standing, bedrock protections for employees that, if permitted to pass, will haunt employees for years to come.

First, this bill overrides discrimination laws against older, existing workers for cash balance plans without any transition protections. It means that older workers will face up to what the GAO calculated would be up to a 50 percent cut in their benefits. These angry constituents will be calling the offices of Members of Congress in droves—just like thousands of IBM employees who spent years seeking to rectify deep cuts in pension benefits from a cash balance conversion. They will ask why Congress permitted companies to slash their benefits with no transition protections, no option to stay in the traditional plans, with no legal recourse. Tough luck to them, according to H.R. 2830. By contrast, the bipartisan Senate bill has significant protections for older workers, but this bill rejects them all.

This bill is also larded up with lots of special interest perks, but none as pernicious as the repeal of the longstanding prohibition on conflicted investment advice. Federal pension law has always required investment advice to employees to be on the level—free from self-interested, tainted financial advice. No more. This bill gives a sweetheart deal to investment houses by allowing them to offer conflicted investment advice to employees so long as they disclose to them that fix is in. And of course, it ignores years of mutual fund financial scandals involving padded fees and commissions, secret market timing, late trading, and more uncovered by the SEC, Elliot Spitzer, and other State attorneys general.

Here is what Arthur Levitt, former SEC chairman, says about the Boehner/Thomas investment advice provision.

. . . I have reservations when . . . advice comes from the very same mutual fund company whose products are for sale to a plans participants. One of my bedrock principles of investing is that advice should come from mutual parties with no axe to grind.

Financial journalist Jane Bryant Quinn and NY Attorney General Elliot Spitzer have also expressed strong opposition to this change.

It's amazing that we don't lift a finger for the Ken Schmidts of the world, but we pull out all the stops to reverse a 30-year bedrock protection for employees for mutual funds and investment firms' lobbyists.

By contrast, the Senate bill does not include this repeal and goes further to actually strengthen the independent advice employees receive.

This bill does nothing to ensure fair treatment between workers and executives. Under this bill, if an employer does not fund its pension plan above 80 percent, then the workers get punished by benefit limits. What's the penalty for the executives who ran the plan down between 60 percent and 80 percent? Zero? If an employer does not fund above 60 percent, the bill requires more benefits limits for workers. For executives, only a weak provision for new executive compensation, with loopholes that allow the companies to promise future golden parachutes.

This bill doesn't reform our pensions; it actually hastens the pension crisis according to two independent Federal agencies. Rather than encouraging companies to keep their defined benefit plan in place, it encourages companies to freeze, downgrade or drop their pension plans altogether. It gives the green light to companies who want to dump and run, and opens new loopholes for mutual funds to steer employees into investments that feather their own nests at the expense of employees. It overrules age discrimination laws to slash the pensions of older workers and other existing employees. And it launches new, punishing benefit cuts for employees of underfunded pension plans, while letting the very executives who ran the company and the pension plan into the ground off the hook. And it does nothing to address the urgent crisis of our airline companies and employees—where jobs and the hard-earned retirement benefits of hundreds of thousands of Americans hang in the balance.

I urge you to oppose this bill.

Madam Speaker, I reserve the balance of my time.

Mr. BOEHNER. Madam Speaker, I yield myself 3 minutes, and I yield to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Madam Speaker, would the chairman engage in a colloquy with me and my colleague, the gentleman from Minnesota (Mr. KLINE), concerning the difficulties facing the airline industry, particularly in terms of assisting airlines and that they fulfill their pension promises to their employees?

Mr. BOEHNER. I will be happy to do so.

Mr. PRICE of Georiga. As you and I are both aware, the airline industry continues to amass losses as the industry strives to become more dynamic, both externally and internally. Losses during the last 4 years have proven that the business model used by legacy carriers is outdated but under duress by high-fuel prices and post-9/11 repercussions.

A primary component playing into the equation of legacy carrier viability is the pension systems currently in place. The current model of defined benefit pension plans and the rules associated with it have come under scrutiny as two legacy carriers, making up approximately 20 percent of the domestic airline market, recently terminated their employee pension plans.

There are no winners when airlines default on their pension plans. Employees now are planning for a retirement with a fraction of what they were originally promised, and further, the Pension Benefit Guaranty Corporation, the government agency and guarantor of all pension plans, is put more and more into the red, and taxpayers are exposed to greater risk. Eventually, the point will be reached when taxpayers have to bail out the PBGC if no action is taken.

With these concerns in mind, I would ask the chairman to agree to work with me and the gentleman from Minnesota (Mr. KLINE) to develop a process, as the Senate has done, to provide airlines with the flexibility needed to fund their defined benefit pension systems over a long amortization period. I believe it is critical that we join with the Senate in this effort and through the conference process to develop final legislation that contains industry-specific reform for the airlines.

Mr. BOEHNER. Madam Speaker, reclaiming my time, let me thank my colleague from Georgia for his work on this issue for lo these many months. I know that my colleague from Minnesota (Mr. KLINE) has similar concerns, and I am happy to yield to him.

Mr. KLINE. Madam Speaker, I thank the chairman for yielding.

I would like to echo my colleague from Georgia's comments on this important subject. I, too, come from a district full of hardworking airline employees that have genuine concerns about the future of their pension plan. Throughout this process, I have worked to ensure that we address this issue in a way that does two critical things: One, make sure airlines can continue to afford participation in their defined benefits system; two, support the policy priorities of our committee, the Education and the Workforce Committee, in our efforts to protect employees by making sure the promises they have been made are backed with well-funded pension plans.

Madam Speaker, I commend the chairman for all his work on this bill and ask for his continued good efforts on behalf of the airline industry as we go forward.

Mr. BOEHNER. Madam Speaker, reclaiming my time, as has been the case all year, the lines of communication between those of us that are interested in this, both on and off the committee, and those on the other side of the aisle as well, the lines of communication are open and will remain open.

As we move into conference, the process, I remain committed to ensuring that the concerns of all stakeholders involved are addressed in a bipartisan fashion as we complete action on comprehensive reforms in an expeditious manner.

I remain committed, as I believe both of my colleagues do, that airlines do, and that we need to find a solution that will allow airlines to maintain their plans and ensure employees of both plans are adequately funded.

Madam Speaker, I reserve the balance of my time.

Mr. CARDIN. Madam Speaker, I am pleased to yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT).

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks.)

Mr. MCDERMOTT. Madam Speaker, this bill proves that the Republicans are not just after poor people. This pension bill boils down to one fundamental principle: The Republicans want all Americans, including flight attendants and everybody else out there on a pension, to be entirely alone, isolated from the strength and compassion of American values.

I am here to say that this pension bill that forces elderly Americans into solitary confinement is abusive, irresponsible and morally bankrupt. This whole year has been about doing it to people. Get rid of Social Security, privatize it, put them on their own. Medicare: Privatize it, put them on their own. Now we have the pension bill: Privatize it, put them on their own.

Take away the union benefit, how will they do it? They are going to Boeing. They squeeze Boeing tight, and Boeing flips into 401(k), and there goes the pension down the drain.

Now this raises the question, what is wrong with you people? We decided a long time ago in this country that there was strength in numbers. We had to do things together. That is why Social Security was developed. That is why Medicare was developed.

The Republican vision articulated in this bill is that America is a sinking ship, and the shout is for every man and woman, you are on your own.

They call it an ownership society. You will still have a pension; it will be a 401(k). But it really is, you are on your own. If you can figure out the market, good luck, baby.

There are not enough lifeboats in the water, and we know that, and everybody is jumping off the ship. In 1980, 40 percent of employers provided a pension. Today, only 20 percent do. Now, that is a 50 percent reduction in 20 years, and the pensions that are provided, fewer provide a guaranteed benefit than they used to get.

So what do we have left? The stark fact is that half of America's retirees have less than $15,000 income. Imagine living in the United States on $15,000 after working for 45 years. Only 50 percent of American households have retirement savings at all, but if they do not have a benefit from the pension and their Social Security, which has not been ripped away from them, they got nothing.

Now, half of the households who have savings have an average $385 a month. So they get their Social Security, $1,800 a month at the maximum, and $385, oh, they are living fat on $2,000 a month.

The people without any savings are disproportionately poor, have nothing except Social Security, and the Republicans, as I say, tried to take that away earlier in the year. We beat them on that, and we should beat them on this.

This is the definition of financial freedom that Republicans want for Americans: They want riskier pensions and no way for anybody to be sure of anything. I urge my colleagues to vote no on this.

Mr. BOEHNER. Madam Speaker, I am pleased to yield 1½ minutes to the gentleman from Louisiana (Mr. BOUSTANY), a member of our committee.

Mr. BOUSTANY. Madam Speaker, I rise in strong support of this bill.

This bill strengthens our Nation's retirement system and comes at a critical time as economic conditions are requiring companies to confront new challenges.

This legislation provides steps to help employers plan and manage finances accurately, to determine pension liabilities and to ensure pensions are funded and benefits are paid.

I want to discuss an important section of the bill regarding multi-employer pension plans. Under current law, multi-employer pension plans are loosely regulated and have few requirements for timely disclosure of information.

For the first time ever, beneficiaries and contributing employers of these multi-employer pension plans will have transparent information to make accurate funding decisions. The legislation creates a system for identifying financially troubled plans and improving their funding status.

Furthermore, new notice and disclosure requirements will provide participants with clearer and more specific financial information. Workers and retirees must be provided with an annual update on the plan's assets, liabilities, financial condition and funding policies. Underfunded plans are required to file financial information with the PGBC and provide notice to workers and retirees. Existing financial disclosure documents are updated to provide more information, particularly about plan mergers and actuarial assumptions.

Multi-employer plans must notify a contributing employer of their withdrawal liability upon request.

Madam Speaker, I urge colleagues to back this bill and take a very important opportunity to put employees' pension plans on a solid foundation.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Madam Speaker, American workers know that a defined pension plan is a promise from their employer, a promise that, when they retire, they will receive a benefit they can rely on. In fact, they have planned their retirement future on that promise. This bill allows companies to break that promise. It allows companies to switch midstream to cash balance plans, ignoring that promise to their workers.

These workers have trusted that this benefit will be there. It will be there at the end of their service to a company. In fact, these workers have quite often given up pay raises or other benefits for their retirement security. These pension benefits have been earned. They have been promised. They must be honored.

Actually, earlier this year, the Republican majority tried but failed to destroy the Social Security system by going back on their promise to every American that at a certain age they would receive a defined benefit, a benefit they could count on.

Americans overwhelmingly stood up to the Republicans and said Social Security is ours, you promised it, we rely on it, you cannot have it.

So the Republican majority could not take Social Security away from Americans with privatization. Now, they are trying to pull the rug out from under people who have dedicated their lives working hard for their companies.

Madam Speaker, these workers were promised defined retirement benefits. They earned those benefits, and this Congress cannot allow companies to go back on their word. We must ensure that these hardworking Americans get the pension benefits they have been promised that they have earned.

I urge my colleagues to oppose H.R. 2830. Protect American pensions.

Mr. BOEHNER. Madam Speaker, I yield myself such time as I may consume, and I yield to my colleague the gentleman from Ohio (Mr. TIBERI).

Mr. TIBERI. Madam Speaker, I appreciate the chairman rising to engage me in a colloquy.

I would like to thank both you and Chairman THOMAS for your work on this bill. As you remember, back during the committee, I spoke about shutdown benefits and appreciate the work that you and Chairman THOMAS have done in the last couple of days to deal with stakeholders in that industry. However, the language contained in the bill does not quite go far enough, I believe, in helping everybody in every industry.

Mr. Chairman, as I have told you before, my father worked in the manufacturing business as an employee for over 20 years. He was a member of the steel workers, and one day when I was in high school, he came home and was out of a job, which is traumatic enough, but he was also out of a pension.

Today, employers and employer groups can work together to provide shutdown benefits to employees and to families, and my hope is that your commitment still stands, as it has, that we will work, particularly with the steel industry as we have done with the auto industry, to make sure that shutdown benefits remain a vital option for employers.

Mr. BOEHNER. Madam Speaker, reclaiming my time, I would say to my colleague that I agree with his comments regarding the importance of shutdown benefits to workers who may suddenly find that the plant for which they have worked, for 20 years in your father's case, happens to be closed.

I think the gentleman knows that I am troubled by the fact that shutdown benefits are often paid from a company's pension plan, despite the fact that they are not technically retirement benefits in the true sense of the word. These benefits resemble severance-type pay benefits, and more importantly, these benefits are not funded.

But I want to make clear, for the benefit of my colleagues, that our bill does not prohibit shutdown benefits, as some have suggested.

Instead, with further modifications that we have made over the last few days, it merely requires that shutdown benefits be paid from corporate assets and not pension plan assets, if the pension plan is funded at below 80 percent. I think this is an important change, and I believe it will help restore the financial integrity of this important benefit.

My colleague from Ohio correctly notes that we still have work to do on this issue of shutdown benefits, specifically as it relates to the steel industry, and as such, I pledge to him and other Members who may have an interest in this as well that on this issue we will continue to work on this matter throughout this legislative process.

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Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I am going to vote to send this bill along to the conference and vote ''yes'' for two reasons: first, I think the bill very wisely includes relief for multi-employer plans, an issue that many of us have worked on for a very long period of time. These are plans run by small businesses who find large contributions to be very stifling to their ability to compete. I think this relief is long overdue, and it is the principle reason that I will vote to send the bill along to conference.

The second reason is I think conference will finally be the forum where some very serious flaws in the bill can be addressed and renegotiated. Mr. MILLER's substitute, which unfortunately was not made in order under this rule, addresses those flaws.

First of all, the law makes it far too easy for failed pension plans to be dumped into the Pension Benefit Guarantee Corporation. Mr. MILLER and Mr. RANGEL had ideas that would preclude that dumping from happening. They ought to be adopted.

Second, I think the law ought to make it clear that there cannot be bias or favoritism in favor of highly compensated people at the expense of the rank and file. Mr. RANGEL and Mr. MILLER's substitute accomplishes that. The underlying bill does not.

These and some other issues, I believe, need to be worked out in the conference. I think, unfortunately, they should have been worked out on this House floor with a proper rule, but with those reservations I will vote to send the bill along to conference.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Mr. Speaker, I rise to urge my colleagues to vote ''yes'' on this important piece of legislation for several reasons. Paramount, it will help an industry that badly needs our help at a very critical time, and the only way we can help the airline industry is to get it into conference. There are a lot of things that may be right with this bill, there a lot of things that may be wrong with this bill, but the only answer and the logical and most responsible thing that we need to do is to vote ''yes'' and send the bill to conference, allow the process to work.

I appreciate Mr. MILLER who has worked very diligently with me and understands my concerns. I represent an area that has probably more airline employees maybe than any other district. I represent Delta Airlines. We all know that Delta Airlines is in a bankruptcy fight, fighting for its very life; and the two most critical issues that they need help on is doing something to lower the high cost of fuel, which we have problems with and how we can do it. There are all kinds of questions. But there is one thing we can do, and that is to help them with relief of their pension plans. So I urge my colleagues to vote ''yes'' on this important legislation.

Mr. Speaker, this is a comprehensive pension reform bill that will protect workers' retirement incomes, give companies a longer window to make underfunded plans whole, and will help protect U.S. taxpayers from taking on the liability associated with future plan terminations.

Now I'm asking your help to help my people in Georgia.

One area that remains to be addressed in conference are major airlines' pension plans. Delta Air Lines employs thousands of men and women in my district who rely now or plan to rely in whole or in part on retirement benefits provided by Delta.

Without a change in current law that allows Delta and other air carriers that have defined benefit plan obligations, like Northwest, Continental and American, to make their pension payments over a longer period of time—20 years—it's certainly a possibility that some or all of these plans will be terminated, benefits reduced and liability shifted to the taxpayer.

These carriers want to honor their obligations, but need to be equipped with the tools to have a fighting chance to do so. And getting this pension bill to conference is our only hope.

Although we are not addressing this specific need today, I strongly support continued pursuit in conference of an airline specific provision similar to that passed by the Senate, extending the payment period for these carriers to 20 years.

Help us get this bill to conference. Let's help Delta and all the airlines who need our help so much.

I want to thank Chairman BOEHNER for your hard work in making this reform bill a reality, and look forward to working with the conferees.

Mr. BOEHNER. Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong opposition to H.R. 2830, the so-called Pension Protection Act. It should be pointed out that H.R. 2830 is opposed by AARP, by the Pension Rights Center, and pension advocates across the country. While I recognize that the Republican leadership included some modest provisions to attract some union support, H.R. 2830 still has a number of provisions that will jeopardize the retirement security of millions of American workers.

Among other harmful provisions, this bill would legalize age discrimination in cash balance pension conversions. Year after year, Congress has voted against cash balance pension conversions because of the harm they have caused older workers.

Mr. Speaker, we do not tolerate discrimination in this country based on race, gender, religion, or disability; and we must not tolerate discrimination based on age with regard to pensions.

Unfortunately, that is exactly what H.R. 2830 does. According to the GAO, cash balance conversions without protections slash the pension benefits of an average 50-year-old by $238 a month. Younger workers are also hurt. As the GAO reported, a typical 30-year-old would see his or her pension benefits slashed by $59 a month under a cash balance conversion. H.R. 2830 would legitimize these harmful pension cuts by legalizing cash balance conversions without requiring employers to protect older workers. That is wrong.

Mr. Speaker, let me read to you what the AARP and the Pension Rights Center have to say about this legislation. According to the AARP: ''We cannot support legislation that would clarify the legal status of cash balance pension plans without providing protections for older, long-service workers involved in cash balance plan conversions.''

I urge a ''no'' vote.

Mr. CARDIN. Mr. Speaker, I am curious: Is the majority on the Ways and Means side going to be using their time or not? Does the gentleman know?

Mr. BOEHNER. I assume so.

Mr. CARDIN. Can I inquire as to the amount of time that remains on all sides?

The SPEAKER pro tempore (Mr. LATHAM). The gentleman from Maryland has 13½ minutes remaining. The gentleman from Ohio has 3½ minutes. The gentleman from California has 11 minutes remaining.

Mr. CARDIN. The time for the gentleman from Michigan?

The SPEAKER pro tempore. The gentleman from Michigan still has 22½ minutes remaining.

Mr. CARDIN. Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise today to oppose H.R. 2830, the so-called Pension Protection Act, not because the system certainly does not need to be reformed, but because I think this particular vehicle, the way it was constructed, actually does damage to what used to be our three-legged stool of retirement security.

We used to rely on pensions; personal savings; and, of course, Social Security. We spent a great deal of this past year fighting any efforts to privatize Social Security and making sure that we had that leg in place. This bill does nothing to enhance personal savings, something this Congress ought to be taking up and making sure we do enhance.

With respect to pensions, we are in need of serious reform, but this moves us in the wrong direction. We have millions of Americans who have worked and tried to put their houses in order, tried to make sure when they retired they had a dignified and comfortable living, but this situation shows us over and over again that companies are now finding it better for themselves financially to go into bankruptcy, capsize their pension responsibilities, and then sometimes coming out more profitable for the shareholders and for some of the CEOs but not for the rank-and-file workers. This is not fair, it is not right, and it certainly is not sound policy for this country.

In too many instances, these companies are defaulting without first having made every possible effort to finance these pension plans and making them work. Workers on the other hand have had decades of working for companies, providing loyal service, the bargain for which was that in the end they would have a guaranteed pension. Many of them had forgone wages during the course of their 20, 25, 30 years of service. CEOs, however, are still getting golden parachutes. They are getting the chance to steer their businesses into court to dump the pension plans and come out and still get taken care of handsomely; yet workers do not.

The Congressional Budget Office and the Pension Benefit Guaranty Corporation both say that this bill will actually add to the Pension Benefit Guaranty Corporation's deficit; that the bill could actually chase companies out of the defined benefit system and leave workers with fewer choices and plans for retirement than they have now.

This bill does not seem to do anything to discourage the pension plan terminations that threaten workers' retirement security, and it does not stop companies from dumping plans in bankruptcy.

In committee, we offered an amendment that would allow the Pension Benefit Guaranty Corporation to intervene earlier, to work with companies in making sure they first exhausted all their options for making sure the plans survived before permitting them to terminate the plans and go into bankruptcy. A substitute for this bill would have allowed us to present that notion again.

Unfortunately, our colleagues on the Republican majority saw fit not to allow a substitute amendment so that we could not debate this proposal. And I suspect we do not see it here today because it would have carried. We would have gotten a majority of people in this Chamber to understand that everything should be done that is possible to prevent a plan from going into bankruptcy before the plan is actually terminated.

Companies should first have to exhaust every single avenue of creative financing in order to save and restore pensions before they allow bankruptcy filings. The Pension Benefit Guaranty Corporation does have expertise it can lend to companies before it gets to that situation.

For those reasons and many others, Mr. Speaker, I urge we vote against this bill and hope we get a better vehicle in the future.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of my time.

As I listen to my colleagues on the other side of the aisle, I have to tell you that I am confused. Some of them say the rules that we are proposing here are too tough and are going to drive employers out of the pension business, while we have some of my colleagues on the other side of the aisle saying the rules are not tight enough and we are going to create more deficits at the Pension Benefit Guaranty

Corporation. Ladies and gentlemen, I think the bill is just right.

Yes, these are better rules that will require companies to better fund their plans. They certainly are better than current law. But I do not believe they go to the point of driving companies out of the defined benefit system.

My good friend from California believes we are going to drive up the deficit. Now, if the rules were not strong enough, I would not have had virtually every employer in America who has a defined benefit plan beating on my office door complaining about the rules we were proposing. I would not have had every labor organization talking to me about how do we get this right.

The fact is, if you look at the chart that we have here, plans must meet a 100 percent funding target. That is not the law today. If they are in the 80–90 percent range, it is good enough. But then as soon as the market turns down or the industry has a bump in the road, it is not long before they are under 60 and in deep trouble. So requiring plans to be 100 percent funded, I think, is a very good idea.

Having an interest rate that is commensurate with their liabilities is something that we have not done ever. We have had one interest rate used to calculate the plan's liabilities. Under this modified yield curve proposal, they will have three different interest rates to use based on the longevity of their workforce, 0–5 years, 5–20, and those employees who will retire after 20 years. It will give us a more accurate reflection of the true cost of those plans.

Third, it requires funding shortfalls to be erased over 7 years. We want to give companies time to go from the current rules to these more responsible rules; and if we do not have a sufficient transition time, what is going to happen is that we are going to create real havoc in the marketplace.

Fourth, it restricts unlimited use of credit balances. We all know that the current rules about credit balances are, frankly, some of the most irresponsible public policy that I have seen. Beginning to restrict the use of those credit balances will, in fact, strengthen these plans.

Fifth, it curves benefit increases for underfunded plans. We all know there are plans that were underfunded, severely underfunded, and yet increasing benefits at the same time. That is not fair to workers who are being given promises that someone has no intention of keeping.

Last, it shores up the finances of the Pension Benefit Guaranty Corporation.

All of these will bring more funding to company pension plans, it will bring more funding to the Pension Benefit Guaranty Corporation, and put our pension system for American workers on a stronger foundation.

□ 1415

Why else do I think we are just right? I have a long list of business organizations that are supporting this bill and a long list of labor organizations that are supporting this bill. It is a balanced bill. I urge my colleagues to support it.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, when United Airlines announced it was going to go into bankruptcy, the Democratic members of the Committee on Education and the Workforce planned an e-hearing so those people who were most affected by the termination of that plan and the bankruptcy of that company would have an opportunity to talk to their representatives in Congress. We were not going to have a hearing on this problem, and these people could not come to Washington and testify. So we opened up the Internet to them, and we received thousands of replies from people telling us their life stories. The amazing thing about it was how many of these people were using their retirement to care for another member of their family. It could be a spouse with an illness, it could be a child, a grandchild, and all of a sudden, half of their pensions were evaporated into the bankruptcy of United Airlines.

Mr. Kenneth Schmidt, a long-time employee of United from Goodyear, Arizona, wrote, ''Dear Congressman, I had worked at United for 38 years when I retired in February of 2003. My job as a mechanic was always a source of pride to me. I worked midnights for many years, and in doing so, I missed many of my family gatherings and holidays. This was what I chose to do in life, and I did it with no complaints. But now I am faced with large cuts in my retirement benefits. My retirement should be a time for taking it easy, traveling and enjoying my 'golden years.' If this cut happens, both my wife and I will be forced to reenter the work world, probably full time if our medical insurance is also affected. This is a sad time in this country for all the workers who are relying on a pension to ease their lives and make this time relaxing and enjoyable. The stress that is being created by the turn of events is not healthy for anyone. Please try and help all retirees and future retirees out of this most unfortunate set of troubles.''

What the problem is is that this legislation does nothing for the Kenneth Schmidts of the world, he and his family. It does nothing to keep companies from simply making a business decision that they can throw the company into bankruptcy, get rid of the retirement and health care obligations to retirees and move along. This is not some unusual practice to bring shame upon a company. The steel companies did it. The airlines have done it. There is a question of whether the automobile industry will go this way.

It is really not completely about their pensions. It is about a decision of a business plan. It is about competition and a change in the marketplace. But the fact of the matter is that, at the end of the day, there is no showing. United did not have to show that for these pension plans they would be a solvent company. In fact, the people from the PBGC wrote and said that they thought the flight attendant plan could be salvaged, and in fact, maybe the others could. But the decision was made and they went into bankruptcy without a hearing on that issue.

Companies should have to exhaust all of their attempts to try to save the retirement plans of these Americans, these people who have worked hard. Remember, these pension plans, they traded pay. They traded health care benefits. They traded vacation days for this pension plan. That was the agreement and the guarantee. Now, unilaterally, the company gets up and walks away from it.

And to rub salt into their wounds, there were pilots required by the laws of this Nation to retire earlier. They take an additional hit on their pension because they are early retirees, not because they wanted to stop flying but because the law says they have to retire.

So we have pension plans that could have been salvaged and people who are being punished because of the Federal law in terms of their early retirements, and this bill does nothing to fix that.

We do that in our motion to recommit. We address the concerns of the flight attendants. We address the concerns of the early retirees, and we address the concerns of the airlines, but it does not do that in the majority bill because they want to go off and use those people as trading chips, the retirement nest eggs of these hard-working Americans, in the conference committee. I urge Members to vote against this legislation.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2830, the Pension Protection Act of 2005 strengthens retirement security for millions of Americans. Current pension funding laws and structures are outdated and threaten the financial stability of the pension system. In fact, the Pension Benefit Guaranty Corporation, PBGC, the government insurer of pension plans, estimates that single employer plans are underfunded by up to $450 billion.

Furthermore, an increasing number of companies are using the bankruptcy system to dump massively underfunded pension plans on the PBGC. Since traditional pensions are a critical component of retirement security, it is essential to form law that modernizes and strengthens funding rules. H.R. 2830 ensures that companies fulfill their pension promises to working people. It requires employers to fully fund their pension plans and rectify funding shortfalls more quickly. It also ensures that employees receive up-to-date and accurate information about their pensions and prevents companies from making future promises when they cannot even meet current obligations.

The bill strikes the right balance in ensuring the plans will begin to be

more appropriately funded while not being so strict that the companies providing pension plans are in danger of having to terminate them. To that end, H.R. 2830 provides transition relief to employers, giving them time and flexibility to get their pension funding in order.

In addition, the Ways and Means Committee incorporated into this package a number of tax incentives to increase retirement savings for Americans. Included in H.R. 2830 are provisions to make permanent the savers' credit and the increased contribution limits for IRAs and other 401(k) plans. The bill also increases savings opportunities for our men and women in combat and provides increased pension flexibility for public safety officers, including firefighters, policemen and emergency medical service employees.

Furthermore, this bill provides tax benefits to make health care and long-term care more affordable. H.R. 2830 makes permanent bipartisan pension improvements established in 2001. While pension reform is a difficult area to make adjustments, given the unique needs of each employer, this legislation is a fair and balanced package that will provide economic security for millions of Americans. It has broad support for both the employer and labor communities. I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent to yield the balance of my time to the gentleman from Maryland (Mr. CARDIN) for his control in this debate.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CARDIN. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. LEVIN), the senior Democrat on the Subcommittee for Social Security and who understands retirement security.

(Mr. LEVIN asked and was given permission to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, in a few words, what we need to do is to reform our pension system but not to undermine it.

There is a basic issue here, and I hope Members will pay attention to it. We have had in this country in the private sector a system of guaranteed monthly benefits under defined pension plans in the private sector for millions and millions of people. That has been meaningful.

What I think is going to happen if this bill becomes law and if it were to be combined in conference with provisions in the Senate is essentially to undermine defined benefit plans and move us towards what are called defined contribution plans, so more and more, everybody will rely on a 401(k) instead of the guaranteed benefit in the private sector. That shift was tried in Social Security by the majority. It failed for good reasons, and now I think there is another effort here regarding private pension plans to lead to the same result.

We asked the Bush administration when they testified before Ways and Means, tell us the impact on industry of your proposals. They could not tell us. If you look at the chief financial officers, 60 percent of them who deal with pension plans essentially say that this yield curve of the administration, and there is a modified version of it in this bill, would lead to benefit cuts and termination of defined benefit plans, and that would affect manufacturing as well as other industries.

I know there have been some efforts to moderate that. Various people have scrambled to try to reduce the potential undermining of defined benefit plans through this provision on credit balances, but I want everybody to know that that is not likely to work out in the main because this Republican bill would discourage companies from doing the responsible and sensible thing, advance funding their pension plans to free up resources in years when they needed to make big expenditures, like rolling out a big product line, and penalize those who would do it any way, who would advance funds.

Look, there are some transition rules, but they are not going to basically resolve this issue of whether we are going to maintain, strengthen defined benefit plans.

Now, it is said, look to the conference committee. All I can say is, look at the history of conference committees in this institution in recent years. What is likely to come out is a bill that would make this bill even worse, and even if it did not, what we face with this bill is this basic question: Do we want to strengthen defined guaranteed pension plans and payments, or are we going to move to everybody on their own? I think this House should stand up and say, let us stand up for a defined benefit system in this country.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Mr. Speaker, I rise again in support of this important legislation. I wanted to get down to this, well, to kind of deal with some specifics as to why it is important that we move this bill on over into conference.

First of all, this is a comprehensive pension reform bill that will protect workers' retirement incomes. It will give companies a longer window to make underfunded plans whole, and it will help protect U.S. taxpayers from taking on the liability associated with future plan terminations.

As I mentioned before, Delta Airlines employs thousands of men and women in my district, and other airlines, in many of your districts throughout this country, rely now or plan to rely in whole or in part on retirement benefits provided by Delta. Without a change in current law, that will allow Delta and other airline carriers that have defined benefit plans and obligations, like Northwest, Continental and American, to make their pension payments over a longer period of time, 20 years, then it is a certainty that some or all of these plans will be terminated. Benefits will be reduced, and liabilities will be shifted to the taxpayer.

We have an opportunity with this vehicle today to make sure that does not happen. We do not need to extend this liability over to the taxpayers. These employers and airline carriers want to honor their obligations, their pensions, but they need our help. They need to be equipped with the tools just to have a fighting chance to do so.

Mr. Speaker, let us give our airlines this fighting chance. I know that is not the main item on the agenda, but this is the only vehicle we have that we can use in conference to fix the situation. I urge Members to give us a chance so we can help a very important industry.

□ 1430

Mr. CARDIN. Mr. Speaker, first let me yield myself 30 seconds to point out that I wish we did have provisions in this bill to deal with the airline industry, because I think we should. The problem is that we do not, and we go to conference with a situation where those who have well-funded plans are now likely to be asked to pay because of the costs of the airline industry. And let me also point out from Mr. BOEHNER's comment about making the PBGC better funded, if we have a lot of terminated plans, it is not going to be better funded. And the gentleman brags about a permanent yield curve which is unpredictable to business. It would be better to have a corporate bond rate, and I am sorry that is not in the legislation.

Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. NEAL), a senior members of the Ways and Means Committee and one of the leading experts on retirement issues.

Mr. NEAL of Massachusetts. Mr. Speaker, as the consumer listens to this debate, one of the things I believe that they want to understand is that the advocates of this legislation, they are the ones that, just a year ago, were trying to privatize the Social Security system. They wanted to privatize the Social Security system. That should not be dismissed. So this bill is now shuttled to the floor, barely a word of consideration in the Ways and Means Committee, and the Republicans on the Rules Committee would not grant us the opportunity to offer an alternative.

Pensions, like Social Security, should be sacred between the employer and the employee. There are few things that matter more than long-term security and a guaranteed pension.

Now, let me give you the schedule of the Ways and Means Committee. We found days to discuss a free trade

agreement with Bahrain, days to hear testimony about Bahrain, a country with 700,000 people. And then we took months and months and months, as they attempted to privatize Social Security. We spent a disproportionate amount of time, after the American people said, and the Wall Street Journal poll today, by the way, indicates quite clearly how they felt about their privatization plan of Social Security. Boy, is that clear. I will bet you on the other side everybody has read that poll by now. That was a terrible idea, and this is a terrible idea.

So where do we find ourselves? This legislation will do more harm than it will do good. The Committee on Investment of Employee Benefit Assets, a group that represents chief investment officers from the larger corporations in the country, recently conducted their own survey and concluded that if this were to pass, 60 percent of those employers would either freeze or terminate their pension plans. Everybody knows the most robust debate in America next year is going to take place over retirement security. Reject this legislation.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself 30 seconds just to say that we had several hearings on this pension bill in the Ways and Mean Committee, including the Select Revenue Subcommittee which I chair. Let me just say that the PBGC's analysis shows that funding contributions to this end up being lower only in the short term; but, actually, starting in 2010, contributions to pension plans will increase. And that is because the funding reforms in the bill are phased in over 5 years.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. ENGLISH), a member of the Ways and Means Committee.

Mr. ENGLISH of Pennsylvania. Mr. Speaker, I particularly want to commend the Chairs of the Ways and Means and Education and the Workforce Committees for putting together a bill which could finally fix the antiquated laws that govern pension plans and protect, at the same time, the interests of workers, retirees, and taxpayers.

What comprehensive pension reform must do and what this bill does for the first time in a generation is to significantly shore up pension funds through tough funding rules, but without pushing employers into termination, bankruptcy, and a multibillion dollar taxpayer bail-out of the PBGC.

But this bill goes beyond reforming pension laws. It also embraces new tax policies to encourage savings for retirement. First, the bill provides for automatic enrollment into 401(k) plans. While defined contribution plans such as 401(k)s have seen increases in participation since their inception, our national savings rate now is well below 1 percent.

A study by the Vanguard Group projected that enacting the automatic enrollment provisions in this bill would boost participation to create 5.5 million new participants in 401(k) plans.

The bill also provides for split tax refunds, where taxpayers may direct all or part of their tax refund to be deposited into an IRA. Recently, we became aware of a pilot project that gave a sampling of tax filers the opportunity to split their refunds between a savings account and a refund check. Participants deposited $583, on average, 47 percent, of their refunds into savings accounts. Most significantly, 75 percent of these individuals had no prior savings. These results speak for themselves.

As cochairman of the Savings and Ownership Caucus, I believe that reaching out and empowering working families is essential to increasing the country's savings rate and ultimately to improve on our trade balance, strengthening our economy and providing a growth path for the American future. I urge a ''yes'' vote on this pro-worker, pro-retiree, pro-savings legislation.

Mr. CARDIN. Mr. Speaker, I yield 3 minutes to the gentleman from North Dakota (Mr. POMEROY), one of the leaders in the Ways and Means Committee on pension issues, the former insurance commissioner from North Dakota.

Mr. POMEROY. Mr. Speaker, there are two major problems with this bill. The first is that it costs $70 billion and the costs are not paid for, not offset anywhere. It drives the deficit deeper.

Last week, this Chamber voted to deal with the AMT 1-year fix, $31 billion. The majority voted to pass a budget reconciliation that added another $56 billion in deficit. This adds an additional $70 billion in deficit. $177 billion in deeper deficits.

You know, it is Christmastime. People are thinking what to give their children. Well, the majority seems intent on giving them quite a present indeed, $177 billion deeper deficit going on top of $8 trillion of debt.

The second aspect of this bill that I want to point out is that it is deeply flawed pension policy, and it will cause the cancellation, freezing of thousands of plans affecting millions of workers.

Do not take my word for it. This is the estimate of the chief investment officers in an organization known as CIVA. They estimate that if this bill passes, 60 percent of the plans will freeze. Frozen plans mean frozen benefits. And we do not know, the rest may freeze as well. They conclude: ''These proposals would have long-term consequences for current and future workers with the potential to damage the retirement security of millions of Americans.'' Potential to damage the retirement security of millions of Americans.

We have seen this story before. This is a group that worked for months to privatize Social Security, take away that monthly dependable income our seniors enjoy. Well, they failed on that one. Now they are after pensions, and without question this will dismantle pensions in the very same way they tried to dismantle Social Security.

Now, several groups are for this bill. Why? Well, airlines are so desperate for a fix they are arguing for this bill even though it has no provisions for airlines. I was stunned when the chairman announced in a colloquy his lines of communication are open. Well, Mr. Chairman, people have been calling. Airlines have been calling. Hello. Advocates for airlines, worrying about their workers have been calling. Hello, Northwest Airlines has been calling. Hello. Delta Airlines, calling. Hello. No answer. No answer from the majority. And so someone that supports an airline urged to vote for this bill when the provision is utterly left out, it makes no sense. You do not help airlines with this proposal. The Democrats had an alternative that had airline relief in it. It was not even allowed for consideration.

You think you are going to be treated fairly in conference committee. The administration opposes airline relief. The chairman has spoken out against airline relief. There is nothing in the bill for airline relief. They are hoping against hope that something will be done. They deserve so much more than that.

I believe that this bill is deeply flawed pension policy. It will hurt workers. Vote ''no.''

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. RAMSTAD), a distinguished member of the Ways and Means Committee.

Mr. RAMSTAD. Mr. Speaker, I strongly support this important legislation to address pending funding issues for America's workers, and I applaud the work of Chairman THOMAS and Chairman BOEHNER on this bill.

As my friend from North Dakota, on the other side of the aisle, just pointed out, relief for the pension plans of America's struggling airlines is not in the current House bill. Certainly important to my district, but I have been assured, Mr. Speaker, that as this bill moves to conference with the Senate version, the special challenges facing airlines will be addressed. It is important to the people of my district. Northwest Airlines is the largest employer in the Third Congressional District of Minnesota, and thousands of Northwest employees are counting on Congress to rescue their pension plan. No one wants to see another pension plan fail and be turned over to the Pension Benefit Guarantee Corporation.

Northwest Airlines is struggling to emerge from bankruptcy and is trying to do the right thing for its employees by maintaining its pension plan. So as this bill moves through the process, I agree, we must provide relief to this fragile industry. But we must pass this bill today to get it to conference so we can take care of the airlines. We must act today by passing this bill so employees can get the benefits they were promised and so the PBGC and taxpayers will not be on the hook. So let

us pass this bill, get it to conference, address the airlines' pension problems in conference, and get this bill to the President before we go home for the holidays.

Mr. CARDIN. Mr. Speaker, I reserve the balance of my time.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. CHOCOLA), a distinguished member of the Ways and Means Committee.

Mr. CHOCOLA. Mr. Speaker, it is because of today's outdated pension rules, workers, retirees and taxpayers all stand to lose unless we act now to reform our pension system. Under current law, employers have been allowed to underestimate their future pension liabilities and to make promises they simply cannot keep. The recent example of United Airlines underscores the need for reform. United Pilots Plan was severely underfunded, yet the company was not required to make cash contributions to that plan in 8 years prior to its termination.

The legislation before us today strikes a careful balance between preserving the defined benefit pension system for workers and ensuring that employers properly fund their plans. This bill provides workers with meaningful disclosure about the status of their pensions, and it protects taxpayers from a possible multibillion dollar bailout of the PBGC, which insures the pensions of some 44 million workers.

But H.R. 2830 contains other important provisions aimed at improving the economic security of retired Americans. For example, it provides retired firefighters and police officers, who often retire early without Medicare coverage, with a tax break on pension withdrawals to pay for health insurance premiums. This provision enjoys strong bipartisan support and offers a small measure to protect against exorbitant health care costs that follow a career spent responding to emergencies.

All together, Mr. Speaker, this bill represents a balanced approach to protecting the interest of workers, retirees and taxpayers, and I urge my colleagues to support its passage.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Speaker, when this issue first came to the floor, I was very concerned, certainly, about how it dealt with some of our manufacturing companies and our workers as well. So many people in my district have worked a lifetime to secure a good pension to help them in their retirement years. They perform jobs that are difficult on them, both physically and mentally; and they have earned their pension.

In Michigan we have so many workers in the airline industry, because, of course, Detroit is the hub for Northwest Airlines. But we obviously also have a huge number of auto workers because of the Big Three and the numerous suppliers to the auto industry that reside there.

Northwest Airlines supports this legislation, as does Continental Airlines, American Airlines, Delta Airlines. So you might think, well, it must be bad for the airline workers then, right? But the bill is actually supported by the Airline Pilots Association and the Association of Flight Attendants. So both management and labor do support this bill.

This bill is also supported by General Motors and even the Delphi Corporation. So you might think it might be bad for auto workers, right? Well, it is actually also supported by the United Auto Workers Union. In fact, it is also supported by the Affiliated Unions of the Building and Construction Trades Department of the AFL–CIO, the Bricklayers and Allied Craft Workers, the Transport Workers Union, the United Brotherhood of Carpenters and Joiners, and the United Food and Commercial Workers Union.

□ 1445

It is also supported by the U.S. Chamber of Commerce and the Business Roundtable. Any bill that acquires the support of business and labor must be doing something right in today's economy and this climate.

I think we have crafted an excellent piece of legislation. It does what needs to be done: It protects workers pensions. Let us pass this legislation. Let us get it into conference with the Senate, and let us get on with the job of ensuring that workers are secure in the knowledge that the pension that they have worked so hard to get will be there when they retire.

Mr. CARDIN. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. DOGGETT), a distinguished member of the Ways and Means Committee.

Mr. DOGGETT. Mr. Speaker, in Texas, gray skies could mean a twister, a hurricane, or just a lot of rain. To avoid disaster, we want a reliable weather forecast. The same when we go to the doctor, a diagnosis before taking necessary action. And the same should also be true of our economic health.

Families that work hard to earn a pension depend on it for retirement security. But too many suddenly find that their pension funds are drained, denying them of the dignified and comfortable retirement for which they have worked a lifetime.

In addition to the many other problems identified here today by my Democratic Ways and Means colleagues, this bill lacks a pension disclosure requirement that would empower workers to understand just how strong or weak their pension plans really are. Having to wait until a retirement fund's bankruptcy is announced in the newspaper is a little too late for employees to take any remedial action to be able to protect themselves.

Both the Government Accountability Office and the Pension Benefit Guaranty Corporation recommend that employees be provided information far beyond the provisions of this bill. I think it is important that we not leave the employees in the dark with corporate employers blocking the light switch.

A majority of the House voted to allow the Federal Government to comb through library records yesterday. Why can employees not be allowed full access to their own pension information today?

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Speaker, I thank the gentleman for yielding me this time.

I would like to offer my support also for the comprehensive pension reform legislation that we are now considering. I would also like to congratulate and thank Chairman BOEHNER and Chairman THOMAS for their hard work in getting us to a point where we can make meaningful and necessary reforms to our pension system.

It has become very clear to us that the laws governing pension plans are antiquated. This is evident from recent high-profile bankruptcies, pension plan terminations and the Pension Benefit Guaranty Corporation's, PBGC, latest report of a $22.8 billion long-term deficit. It would be criminal if Congress were to ignore these instances and not do something to protect the interests of workers, retirees and taxpayers alike.

As we have all heard here this afternoon, H.R. 2830 will strengthen pension plan funding rules, provide workers with meaningful disclosure about the health of their pension plans and protect taxpayers from a possible multibillion dollar bailout of the PBGC. I would like to highlight a couple of provisions within the bill that I believe are also vital to the health of the system.

First, many workers and retirees in recent years mistakenly believed that their pension plans were well funded only to receive a shock when the plan was terminated. Without basic information, workers and retirees are left without the most basic tool they need to hold their employers accountable: complete and accurate information about the true funded status of their pension plans. The Pension Protection Act ensures workers and retirees are given timely, accurate and straightforward information about the health of their plans and thus their own financial future. It is my belief that requiring transparency is one of the most important things that Congress can do for employees.

Second, when pension plans are underfunded and worker retirement security is in jeopardy, excessive executive compensation packages can add insult to injury by heaping lavish benefits on executives while workers and retirees wonder if they will have any retirement benefit at all. The Pension Protection Act restricts the funding of

such executive compensation arrangements if an employer has a severely underfunded plan. Moreover, it requires plans that become subject to these limitations to notify affected workers and retirees.

Again, I thank the chairmen for their leadership, and I urge my colleagues to support the Pension Protection Act.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. RYAN), a distinguished member of the Ways and Means Committee.

Mr. RYAN of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I cannot think of anything more scary, anything worse than working one's lifetime, working hard every day and then seeing their pension go before them, seeing their pension get terminated. That is the worst possible thing that could happen to a worker and to a family.

We have a system that needs fixing, Mr. Speaker. We have a pension system that has some loopholes where companies could not put money in their pension plan when they needed to, to make them funded, and then we have a system that disincentivizes companies from putting more money in their pension plan to prefund the workers and employees when they have one and they have the will to do so. That is wrong, and that needs to be fixed.

Yet, on the other hand, Mr. Speaker, as this legislation was being drafted, we want to make sure we get to a time where companies fully fund their workers' pensions. Getting to that transition was difficult, and I want to thank the chairman of the Ways and Means Committee, Mr. THOMAS; the chairman of the Education and the Workforce Committee, Mr. BOEHNER, for working with us to address our concerns specifically on behalf of the auto sector. Because of this, the issues surrounding credit balances, plant shutdown benefits and those things that were raised by the auto sector, by the UAW, have been addressed in this legislation, are being addressed in this manager's amendment.

I opposed this bill in committee. I was the only Republican to do so. But, Mr. Speaker, we have fixed this legislation. This legislation is good for labor. This legislation is good for management. But, most importantly, this legislation is good to the employees and the workers of America.

I encourage and I ask for a yes vote on this bill because it is fixed. It is good, and it should pass.

Mr. CARDIN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Ohio (Mrs. JONES), distinguished member of the Ways and Means Committee.

Mrs. JONES of Ohio. Mr. Speaker, I thank the gentleman for yielding me this time.

The prior speaker said we have fixed it. Well, if it is fixed, why are the airlines not included in the legislation?

I have been on the floor of the House ever since I came here. My daddy worked for United for 40 years. My sister worked for United for 25 years. My brother-in-law worked for United for 27 years. My niece works for United right now. If we are so concerned about them, why is it not in the legislation?

Secondly, if we fixed it, why is it unclear what happens with cash balance plans that are already in place and the IRS has not given them a decision? We go prospectively, but we do not go retroactively.

In the City of Cleveland, there are four companies that went into a cash balance plan, and cash balance plans are the wave of the future. People want portability. They are not going to work for United, like my dad, for 40 years. They are going to work one place 7 years. They are going to work somewhere else 7 years, and they need to move their money around. It is the wave of the future, and we have not fixed cash balance plans. And I encourage my colleagues to fix it. If they are saying we fixed it, fix it right now.

I want to encourage Mr. BOEHNER, Mr. THOMAS, Mr. CAMP and everyone else: Do not tell us we are going to fix it in conference. Put it in the bill. I would like to see it in writing. I want to see it in red, black, blue, brown, whatever color you want to give it to me. Our promises are idle if it is not in writing. I want this legislation to work for Americans because people do deserve certainty. They deserve certainty. Employers who went into a plan, they even paid up for their employees to deal with the issue of wearaway, and they cannot get clarity on the programs that they have in place right now. Help them. Fix it.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield to the gentleman from Minnesota (Mr. KENNEDY) for the purpose of a colloquy.

Mr. KENNEDY of Minnesota. Mr. Speaker, I believe that section 122 of this bill is an important public policy statement that says corporate executives who are not properly funding the pension plans of their employees should not be feathering their own nests with overly generous retirement packages. Currently, the bill penalizes employers who fund executive compensation if the sponsor's employee defined plans are less than 60 percent funded. My concern is that by setting this threshold too low, we are not discouraging them enough from being irresponsible with the retirement security of their employees while they take care of their own retirement packages.

I ask the chairman to work with me in conference to increase the threshold to at least 80 percent so that we encourage executives to take their pension funding obligations more seriously, not leave their defined benefit plan beneficiaries and, indeed, the PBGC and taxpayers on the hook.

Mr. CAMP of Michigan. Mr. Speaker, reclaiming my time, I would just say to the gentleman, as chairman of the Select Revenue Measures Subcommittee of Ways and Means, I look forward to working with him on this and other issues as this legislation moves through the process and to conference.

Mr. KENNEDY of Minnesota. Mr. Speaker, I thank the gentleman for his response.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a distinguished member of the Ways and Means Committee.

Ms. HART. Mr. Speaker, I thank the subcommittee chairman, Mr. CAMP, and my colleagues for working so hard on this bill, along with our chairman and chairman of the Education and the Workforce Committee. Without their urging, this bill would not be on the floor today, and this bill is so extremely important, especially to constituents in my district.

Over the last year, I have met with employees, union members, covered by both multi-employer and single-employer plans, also with the employers to discuss their concerns regarding pensions. Pension protection continues to be their top issue. Many of my constituents have faced challenges to their pensions with companies like U.S. Airways filing for bankruptcy or others turning their plans over to the Pension Benefit Guaranty Corporation.

This bill would establish sensible funding rules, requiring employers to fund 100 percent of their pension liabilities. In this bill, fair consideration is given to those plans which need to catch up, but funding shortfalls must be made up within 7 years. Also, employers are urged to increase their pension contributions during profitable years, which they cannot currently do freely under the present rules.

In addition, the bill encourages greater transparency so that employees know the status and financial health of their own company's pension plan. Ultimately, this is their own retirement financing. They have a right to know. These requirements will create more stability and certainty in these pension plans.

This bill also prohibits employers from funding golden parachute executive compensation plans if the pension plans of the rank and file are underfunded. U.S. Airways executives walked away with $35 million in executive compensation after running the company nearly into the ground and dragging concessions out of their employees, including reductions in pension benefits for pilots and leaving other employees in the dark about the funding of their pension plans. This is unfair to the hardworking employees of these companies, and this bill would prevent such a travesty in the future.

Finally, this bill encourages additional retirement savings by extending and improving incentives to save. The bill makes permanent provisions

passed in 2001 to increase annual contributions to IRAs and qualified pension plans and ''catch-up'' contributions for individuals over 50.

I hope my colleagues will support this legislation because it finally gives employees what they need: stability in their retirement.

Mr. CARDIN. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL), whose provisions are in this bill concerning split refunds and automatic enrollment and other issues that he has brought to the table.

Mr. EMANUEL. Mr. Speaker, this legislation is a missed opportunity.

As my colleague from Maryland just noted, I have sponsored legislation on the automatic enrollment and 401(k) plans, direct deposit of tax savings into a savings plan, and the savers credit for people with moderate income, to start saving. Why? Because basically almost 80 percent of small business employees have no retirement plan outside of Social Security. For approximately 38 percent of the households in America, the only savings plan they have is Social Security.

By doing what is right, by helping people start up their personal savings through 401(k)s and other types of personal savings, we would actually encourage people to save for their retirement. So this legislation on the defined contribution level takes the right step. And it is so unfortunate because we can get an overwhelming vote for those provisions to help Americans save outside of Social Security. And I am glad we took this year to stop the privatization of Social Security. But in doing that, they have added the provisions on the defined benefit plans. On a standalone, none of that would pass. So what they are trying to do is get the goods through Customs using the defined contributions to get through what I think are some very dangerous provisions as it relates to the defined benefit plans for millions of workers who have basically negotiated a deal with their employers. Because what does this legislation do?

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It makes a bad situation worse.

The PBGC and the Congressional Budget Office have estimated that in fact $9 billion in defaulted plans would be left on the taxpayers. We started 3 years ago with the PBGC, which guarantees all retirement plans in this country, with a surplus. Today, we are running a deficit, and this legislation would make that situation worse. As the old saying goes, when you are in a hole stop digging. This legislation would dig even faster.

Companies, and we know them all, we have seen the stories, are using our bankruptcy laws to literally dump their pension systems, and it is a backdoor to walk out of their obligation. This legislation does nothing to stop companies from dumping their plans, and it does not ensure fairness between workers and executives. So while there are good provisions that relate to the defined contributions, it makes the defined benefit plans much worse.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, pension reform is more than just an accounting issue; it is about protecting the trust between employers and their employees. It is critical for Congress to address this issue and step in and fix rules that no longer work. Many businesses are complying with pension laws. However, the current system is too weak, and many companies have plans that are underfunded. It is time for Congress to step in and reform single-employer pension plans, multi-employer plans, improve disclosure and enhance retirement savings. The bill before us achieves these goals.

The pension bill requires companies to accurately measure how much to contribute to their plans and how much they owe.

This bill also protects shutdown benefits. Those are benefits that are paid to workers who are being laid off because of a plant closing. These benefits are critical to help older workers affected by corporate downsizing. It is imperative that well-funded plans be able to continue to provide their workers with shutdown double benefits, and I am glad this Pension Protection Act preserves this important pension security tool.

The strength of multi-employer pension plans is critical to the retirement security of many Americans. Approximately 1,600 multi-employer plans cover about 9.8 working people in the United States. Multi-employer plans, like single-employer plans, cannot simply be turned over to the PBGC. Therefore, it is even more important to those involved that these plans are properly funded.

This bill strengthens the solvency of multi-employer defined pension benefit plans by providing trustees with the tools to fix the plan's financial situation. The bill requires trustees to adopt rehabilitation plans for critically funded pensions and protects employers from defaulting on their promises.

One important provision of this bill, and perhaps one of the least mentioned, is regarding disclosure requirements. The bill would give retirees and employees better information on the financial condition of their plan. Now workers will be sent information from their plan's sponsor and the plan's ratio of assets to liabilities, the plan's funding and asset allocation policies and other critical information.

While protecting pensions is a focus of this legislation, the bill does much more than that. It includes new opportunities for people to prepare for their retirement and bolster their savings. The bill provides individuals with new insurance products that help Americans better afford long-term health care costs.

I applaud the work of Chairman THOMAS and Chairman BOEHNER and urge support of this bill.

Mr. CARDIN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I am sure that people who are watching this debate are somewhat confused about some of the technical provisions that we have talked about on the funding of a guaranteed fund. But let me try to simplify it.

The bottom line is that the total changes that are being suggested make it more rigid and less predictable for those companies that have traditional pension plans as to how much money they have to put into the guaranteed fund. Understand that the guaranteed fund is funded by the companies making contributions to the guaranteed fund. It is not funded by the government.

So if you have a plan that is well-funded and you are now being told it is going to cost you more to stay in that plan, there is an incentive for you to freeze your plan or to leave. That is what is going to happen, and that is why we are very concerned about many people losing their traditional pension plans as a result of this legislation.

The second point, let me point out, is that many Members have been talking about the airline industry and to try to help the airline industry. I pointed out that I think we should do that. We should do that because, A, it will allow the guaranteed fund to concentrate on other plans, and companies will not arbitrarily cancel their plans because they are afraid they are going to be stuck with the costs of bailing out the airline industry. That makes sense. But we are told: We are going to do that in conference, trust us.

We are the legislative body. We should do it. How do we know what is going to come out of conference? It is our responsibility to make sure it is done. We made some changes for the auto industry. Why have we not brought in those provisions? It is our responsibility to do it.

And I haven't heard anyone talk about how we are going to correct the problem of an industry going into bankruptcy in order to save their costs. Is there any hope that that will come out of conference? I doubt it.

We can do better. I urge my colleagues to reject this bill.

Mr. CAMP of Michigan. Mr. Speaker, I yield the balance of my time to the distinguished chairman of the Education and Workforce Committee, the gentleman from Ohio (Mr. BOEHNER).

The SPEAKER pro tempore (Mr. LATHAM). The gentleman from Ohio is recognized for 3 minutes.

Mr. BOEHNER. Let me thank my colleague and my friend and classmate, Mr. CAMP, for yielding me time, and thank all of my colleagues for what I think has been a very healthy debate today about how we strengthen America's pension system.

We have heard Members argue that the bill that we are bringing before us is too difficult, that we will force companies out of pension plans and leave their employees hanging; while others

have argued that the rules are not tough enough, and we are keeping the door open to irresponsible practices.

I truly do believe that we have a bill that is balanced, that will not push employers who have these plans out of the system and will protect American workers who have been promised these benefits.

If we do not act, we know exactly what is going to happen: Millions and millions more Americans are going to lose an opportunity for a defined benefit pension plan, and millions of Americans who already have one are going to be at risk that they will not have their plan. So Congress must act.

Not only did we deal with single-employer pension plans, but we have not talked much about multiple-employer pension plans that you find traditionally in the trucking industry, the food industry and others. And while they have not been talked about much today in this debate and the administration did not propose changes, there are serious changes to the multi-employer pension system in this plan that will help strengthen that system.

Those plans, by and large, are healthier than single-employer plans, and we have labor and management on both sides in the multi-employer sector come together to put rules in place so that their plans can never get into a very weakly funded position. I am glad they are in the bill.

Lastly, let me point out that there are large numbers of groups supporting this bill. Every major labor organization, with the exception of several, is supporting this bill. Many in the management sector in every large business organization is supporting this bill. Why would all of the labor organizations and the business organizations all be on board in support of this bill? Because they think it is balanced. They think it is the right thing to do, and they know that Congress needs to act.

Is everything perfect in the bill? No. As the gentleman pointed out, we have got airline relief that we will probably be talking about again soon. Our commitment is to deal with this in conference.

My colleague from Ohio talked about the need to go further on cash balance language. I certainly agree with her. There are 7 million Americans who have cash balance plans or other types of hybrid plans. We need to provide legal certainty for those who have converted to a cash balance plan so that we do not put in jeopardy the 7 million Americans counting on benefits from those plans.

We have a good bill. I would urge my colleagues to support it.

Ms. MILLENDER-McDONALD. Mr. Speaker, I rise in strong opposition to the Pension Protection Act of 2005. This Act does not protect the American worker. In fact, this bill places the future of today's American worker in jeopardy.

Even worse, this bill places those who have put in the years and worked hard at the mercy of bad management decisions.

Furthermore, pensions are a financial safety net that many Americans and businesses pay into. Pension programs are an important factor when workers choose a job and it plays a large part in financial planning.

Many people go their entire career thinking they will have this money upon retirement and regularly contribute even when they could use the money to take their family on vacation or buy their children clothes. Instead, they place earnings into their pensions as much in the short run as they will need in the future.

Pension plans are as much about personal responsibility as they are about good financial planning.

The American worker's pension should not be a pawn for businesses to navigate bankruptcy. I am especially concerned about the adverse affect this bill has on women.

As a Member on the Aviation subcommittee and a frequent flyer, I have worked for years with airlines and flight attendants.

Many, many airline employees are women. Many of those women are single mothers. Without a guaranteed source of retirement income, it is almost impossible for these women to stay in the employ of the airlines—and worse yet, many of these women have already put in years of hard work and have already lost upwards of 75 percent of their pensions.

Mr. Speaker, my office has received a towering pile of heartbreaking letters from people whose pensions have been lost.

How do we as Members of Congress tell these people that after all these years of paying into a pension—working toward a retirement—they have to make other plans for their golden years.

We have an opportunity to do some real good. We have an opportunity to strengthen the commitment between the employers and workers, however this bill further drives a wedge between the two.

Vote no against this bill today and let us pledge to come back during the second session of the 109th Congress and do this right.

We owe it to the American people to take their financial future as seriously as they do. Vote no on the Pension Protection Act of 2005.

Mr. HOLT. Mr. Speaker, I rise to express my opposition to the pension reform legislation that we are considering today. I oppose this legislation because it will further erode an employer's willingness to provide defined benefit plans and will close the loopholes that allow companies to dump their pension obligations on to taxpayers.

Throughout the 1990's, in American workplaces a dramatic shift from traditional defined-benefit plans to defined-contribution plans occurred. Rather than being able to count on a regular pension check of a specified amount each month for the rest of his or her life, many workers must now put money in a mutual fund or other investment and take what comes each month for as long as it may last. Many other companies began to ''cash out'' their pensions giving employees a cash balance payout, claiming it was equivalent to a pension. It is not equivalent to a pension. Furthermore, some companies have used the Pension Benefit Guarantee Corporation to bail them out of their financial troubles. Now, millions of workers have entered retirement, only to learn that their company could not provide the benefits they had been promised. The Pension Benefit Guarantee Corporation has amassed a $23 billion deficit, jeopardizing its ability to insure defined pension benefit plans. As millions of more workers face reduced benefits, it is clear that Congress must find an effective solution to this problem. Unfortunately, the legislation we are considering today will not strengthen the defined benefit program or help to ensure that millions of workers receive the benefits they have been promised and planned on for retirement.

Unlike the Democratic substitute that Representative MILLER and Representative RANGEL tried to offer, this bill will not make it more difficult for companies to use the bankruptcy code to dump their pension obligations to the Pension Benefit Guarantee Corporation (PBGC). The decision of United Airlines to force the PBGC to cover its pension obligations resulted in reduced benefits for its employees and retirees and shifted its burden to fulfill pension promises on to the American taxpayer. As a result of United Airlines action, the PBGC was forced to absorb $8 billion in guaranteed benefits, and employees and retirees lost $3 billion in their earned pension benefits. Then the directors of the reorganized company gave themselves bonuses. Northwest and Delta Airlines, as well as companies such as Delphi are also on the verge of following in the path of United Airlines. This will undoubtedly increase the PBGC deficit, and further jeopardize its ability to insure pension plans. I hope that when this bill moves to conference, the conferees will include important provisions from the Democratic substitute that will reduce a company's ability to dump their pension liabilities to the PBGC. Specifically, pension reform legislation should include measures that require companies to seek alternatives before terminating their pension plan and require companies to prove that the plan is unaffordable in a court of law.

I also believe that the provisions in the bill that legalize cash balance plans will hurt millions of workers. Over 8 million workers have already been affected by cash balance conversions, before the courts put a hold on the discriminatory way companies converted to these cash balance plans. The GAO has estimated that without older worker protections over 85 percent of younger workers and 90 percent of older workers would loose expected pension benefits if a defined benefit plan were converted to a cash balance plan. Legalizing cash balance plans will hurt workers that are nearing retirement and will cause more anxiety for younger workers that must plan for retirement with uncertain benefits.

Although I will oppose this bill for the aforementioned reasons, there are provisions that I believe will benefit workers. For example, this legislation will allow employers to give their employees access to professional investment advice. With the dramatic increase in hybrid plans and defined contribution plans, employees are now faced with making multiple investment decisions that will have a profound impact on their retirement security. This investment advice provision will ensure that workers will be able to make informed decisions regarding their future.

American workers deserve to know that their pension is secure and that they will receive the benefits that they have been promised during their years of service. As this bill moves to conference, I hope the conferees will be able to improve the shortcomings of this legislation so that we can pass legislation that

will preserve the defined benefit pension system.

Mr. MARKEY. Mr. Speaker, I rise in opposition to the so-called pension ''reform'' bill today on the House Floor.

The bill before us today fails to address fundamental problems that have robbed millions of hard-working Americans of the retirement benefits they have earned. This Republican bill will not prevent companies from dumping their pension plans onto the Pension Benefit Guarantee Corporation (PBGC), which already is burdened with a $23 billion deficit and may have to be bailed out by taxpayers. This bill does nothing to protect older workers when their pension plan is converted to a ''cash-balance'' plan that could short-change them of the benefits they have accrued. This bill also contains provisions that increase the costs and regulations for companies to maintain pension plans to the point that many companies will freeze or abandon their plans, accelerating the growing pension crisis.

Democrats were not permitted to offer amendments to improve this bill. While I cannot support this flawed, misguided Republican bill, I support the Democratic Substitute offered by Representative MILLER, Representative RANGEL and Representative CARDIN. The Democratic Substitute would stabilize existing pension plans by extending for 2 years the corporate-bond-rate used to determine PBGC liabilities, encourage employers to maintain defined benefit plans without cuts in workers' pension benefits, and protect older workers during cash-balance conversions.

As the pensions of workers remain at risk, I am concerned about conflicts-of-interest, hidden financial arrangements and unlawful activities that may be causing or contributing to the poor financial health of pension plans at companies across the country. In May 2005, the Securities and Exchange Commission (SEC) released a report, ''Examinations of Select Pension Consultants'', that revealed significant conflict-of-interest and non-disclosure issues within the pension plan consultant industry. Specifically, the SEC found, among other conclusions, that:

> [P]ension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the client's needs. Such a conflict can compromise the fiduciary duty that investment advisers owe their clients.

The findings included in the Commission's report are particularly disturbing for pension plan beneficiaries, whose benefit payments are dependent upon their plan management's diligent performance of its fiduciary duties, and for the Federal Government, which is faced with an enormous deficit at the Pension Benefit Guaranty Corporation (PBGC) as a result of a series of massive corporate bankruptcies that have resulted in PBGC assumption of severely underfunded pension plans terminated when the corporations entered bankruptcy.

Representative MILLER and I have requested that the Government Accountability Office (GAO) investigate whether the Federal Government is aggressively regulating and enforcing statutes intended to protect pension plans and their beneficiaries from conflicts-of-interest and similar undisclosed relationships that can impair pension fund returns. We have urged GAO to examine whether any of the 3,500 terminated pension plans that are now the responsibility of the PBGC may have been adversely affected—prior to PBGC assumption ofthe plans' liabilities—by the types of conflicts and hidden financial arrangements uncovered by the SEC.

I am hopeful that the pension legislation considered today by the House will be greatly improved during the conference with the Senate, so that we can have a vote on pension reform legislation that actually addresses the real problems that exist in the current system. Additionally, I look forward to GAO's work in the important area of pension fund consultants. The ongoing crisis in the pension fund marketplace requires a thorough, independent review to identify problems with government regulation and enforcement and recommend improvements. American workers have relied on the pension promises of their employers. It is unconscionable to abandon these workers.

I urge a ''no'' vote on this Republican pension bill, and a ''yes'' vote on the Democratic Substitute.

Mr. GUTKNECHT. Mr. Speaker, I rise to speak on behalf of 7,000 current and former IBM employees who live in my district. While most of this bill is necessary and the legislation is appropriate, the weakness of the bill is that it fails to clarify the rules concerning the conversion of defined benefit pension plans into cash balance pension plans.

I understand the bill will not affect the IBM employees and their court case. It could, however, affect millions of Americans that are currently vested in defined benefit pension plans. Even though they may be working for a very profitable company, they could, under the terms of this bill, show up for work one day and learn that their promised benefits have been dramatically reduced with the sweep of a pen.

Under cash balance plans, older, long-serving employees do not have the same opportunities to build up retirement benefits that younger workers do. The bill before us today would allow conversions to take place but gives no protections to workers during these transitions. I offered an amendment last night at the Rules Committee to provide protections to vested workers. Unfortunately, the Committee did not rule my amendment in order.

The Senate version of the bill contains more protections for workers. For those and other reasons AARP supports the Senate passed bill and opposes the House bill. I would hope protections like the amendment I tried to offer will be incorporated in the final version.

While I am voting today to move the bill forward into conference with the Senate in the hopes more worker protections can be added, I reserve the right to oppose a report that fails to correct this glaring omission.

Mr. LARSON of Connecticut. Mr. Speaker, I rise in opposiiton to the so-called Pension Protection Act and in support of the Democratic motion to recommit.

There is no question that our Nation is facing a pension crisis. Over 34 million American workers currently rely on the benefits they receive from a defined benefit pension plan to make ends meet. Yet, with the growing number of corporations cutting pension benefits or declaring bankruptcy, people are increasingly concerned about their retirement security. More and more, American workers are facing the prospect of seeing their employers use our Nation's bankruptcy laws to back out of their pension promises and turning their obligations over to the Pension Benefit Guaranty Corporation (PBGC)—which only partially funds promised benefits.

Unfortunately, the bill before us today is a missed opportunity to provide American workers with real pension protection.

H.R. 2830 makes significant changes to the rules for defined benefit pension plans, increases the premiums that companies pay into the PBGC, and does nothing to prevent companies from dumping their pension obligations on American taxpayers. According to the Chief Investment Officers of over sixty percent of our Nation's largest pension plans, these likely will lead to cuts or terminations of existing plans. According to the Congressional Budget Office, this legislation would add over $70 billion to the federal deficit and fails to improve the PBGC's financial condition by increasing the agency's financial shortfall by $2.5 billion.

Rather than allowing an open debate on this important issue, the majority leadership has chosen to close this bill from amendments or even allow consideration of a Democratic substitute. The Miller/Cardin motion to recommit protects American pension benefits by making it harder for companies to declare bankruptcy and abandon workers pensions, protects worker's retirement security by providing employers with pension funding stability and gives the airlines the tools they need to shore up their employee pension plans. This alternative would provide American workers with real pension protection, rather than continued retirement insecurity.

Mr. Speaker, today's legislation is the latest in a series of attempts to privatize profits and socialize losses. It is my sincere hope that as we move into conference, we can produce legislation that will protect the hard earned pension benefits of our Nation's workers.

Mr. NORWOOD. Mr. Speaker, I rise in strong support of the Pension Protection Act (H.R. 2830), legislation that responds to the many challenges currently facing the financial health of the defined benefit pension system.

The defined benefit system provides millions of American retirees and current workers with retirement benefits earned over the course of a lifetime. Yet the rules governing the structure of the defined benefit system are geared towards a 20th century workforce that no longer exists. The Pension Protection Act will bring these outdated rules into the 21st century and respond to the rapidly evolving American workforce that is more fluid, technologically advanced and diverse than ever before.

H.R. 2830 accomplishes this goal by implementing four commonsense reforms that hold employers to a higher standard and will ensure the fiscal future of the defined benefit system: (1) The legislation will ensure employers properly and adequately fund employees' defined benefit pension plans; (2) provide meaningful new disclosure to workers about the status of their pension plan; (3) secure the financial future of the Pension Benefit Guarantee Corporation (PBGC) and prevent a possible multi-billion dollar taxpayer-funded bailout; (4) encourage greater employee savings for retirement goals by reforming outdated defined contribution plan rules.

The legislation also prohibits executive compensation arrangements when a rank and file employee pension plan is severely under-funded. This important provision will prevent corporate chieftains from escaping via the golden

parachute when an employer carries a qualified pension plan that is 60 percent underfunded or more. After all, the average working man in rural Georgia deserves nothing less than a corporate executive in New York.

And while H.R. 2830 includes important reforms to ensure employers more accurately fund their pension obligations, it also holds union leaders to a higher standard as well. Over the years, union leaders have exerted tremendous pressure on employers in every commercial sector by negotiating benefit increases to defined benefit plans that are already under-funded.

While many employers have not held up their end of the bargain by responsibly funding plan benefits, union leaders are equally responsible for misleading their workers and pushing for unrealistic benefit increases knowing full well an employer's plan is already under-funded. This is no less outrageous, and H.R. 2830 takes important steps to prevent union leaders and employers from negotiating unrealistic benefit increases that will only hasten plan failure and an eventual taxpayer bailout.

In addition, the compromise measure includes a series of requirements to address ''Critical Multiemployer Plans'' funded between 65 percent and 70 percent. These plans face significant and immediate funding problems. H.R. 2830 not only strengthens the funding requirements for critical plans, it also requires trustees to develop a rehabilitation proposal to show a 20 percent improvement over 15 years.

Mr. Speaker, the number of employer sponsored defined benefit plans are declining by the day, down from an all-time high of 170,000 in 1985 to 30,000 today. This is unacceptable. Congress should not sit idly by while the defined benefit system continues to die on the vine, and for that reason I urge all of my colleagues to avert the pending retirement security crisis by passing the Pension Protection Act today.

Mr. UDALL of Colorado. Mr. Speaker, I must reluctantly oppose this legislation.

I support changing the current rules related to pensions, and had hoped that this bill would be considered under procedures that would allow it to be improved.

However, the Republican leadership has made it impossible for even a single amendment to be considered—and the bill's flaws so outweigh its good features that it should not be passed in its current form.

Among the most troubling aspects of the bill is its potential effect on defined-benefit pension plans.

Some 34 million Americans are now covered by defined-benefit plans, but their retirement security is threatened by the failure of some companies to adequately fund the plans, by corporate bankruptcies such as that of United Airlines, and consideration by even profitable companies of freezing benefits and ending their plans.

And many of the people who manage large pension plans tell us the result of enacting this bill's provisions that would make significant changes to the rules for these plans and increase the premiums companies pay the Pension Benefit Guaranty Corporation, PBGC, could be benefit cuts or, worse, termination of even well-funded plans.

At the same time, the bill's requirements for increased payments to PBGC threatens the financial health of many manufacturing companies and fail even to adequately improve PBGC's financial condition—its own analysis found that the bill would increase the agency's financial shortfall by $2.5 billion.

And both the Congressional Budget Office and PBGC have concluded that the bill would increase claims on the Federal Government by billions of dollars, which would increase the likelihood of a massive taxpayer bailout as well as the loss of billions of dollars in employee and retiree benefits.

I am not prepared to support legislation that would increase the chances of such outcomes, especially when its tax provisions would substantially increase future budget deficits and would primarily benefit taxpayers in the highest income groups.

According to the Joint Committee on Taxation, the revenue effects of the tax provisions primarily benefiting higher-income households would grow from $3.6 billion in 2012, the first full year affected, to $5.6 billion a year by 2015. But the effect of extending the saver's credit, which is most important to lower-income honseholds, would fall from $1.4 billion in 2008, the first full year affected by that provision, to $943 million by 2015.

That means that while in 2012, the saver's credit would account for one-fourth of the total benefits of all of these provisions, by 2015 it would account for only 14 percent of the total benefits. And after that the saver's credit would dwindle further, eventually fading away, while the upper-income pension tax changes would become still more robust.

As the Center on Budget and Policy Priorities says, ''To allow the severe erosion over time of the principal tax incentive for modest-income families to save for retirement does not make sense as retirement policy. To do so while protecting very generous retirement tax-cut benefits that go overwhelmingly to higher-income taxpayers who generally are able to save adequately for retirement anyway, without these tax subsidies, is even less defensible. And incorporating regressive tax policy of this nature into a bill that swells budget deficits, and opens the door to still more deficit-increasing tax cuts in the future, stands sound policy on its head.''

I think they are right.

And, in addition to badly framed provisions, the bill's flaws also include some serious omissions. I am particularly disappointed there is nothing in the bill like the bipartisan Senate-passed provisions to protect the pensions of employees and retirees of airline companies. As Coloradans know all too well, the employees and retirees of United Airlines already have lost $3 billion in earned pension benefits. We should be working to help them, and we also should be working to make it less likely that their experience will be repeated.

In summary, Mr. Speaker, while I recognize that there are good aspects to this bill, and while I think Congress does need to act on this subject, I think that on balance the bill as it stands should be rejected so that a better-balanced measure can be brought forward.

Mr. BLUMENAUER. Mr. Speaker, the income security of Americans has been under constant attack by the administration and Congress this year, especially those families who have not had the good fortune to earn a living that places them in our highest income brackets.

The year started with efforts to dismantle Social Security, an efficient program that is the primary source of income for a majority of retirees. Next, a slanted bankruptcy bill that puts no burden of responsibility on unscrupulous lenders and credit card companies and all of it on the families that face hardships from large medical bills, family breakups, and job losses. Congress has been wringing its hands the last couple of months over which programs for America's most vulnerable should be cut so tax cuts can be extended years from now.

The latest attack on the security of American families is this pension bill. It is clear that the Pension Benefit Guaranty Corporation must be strengthened and that rules must be put in place to ensure companies adequately fund the promises they make to employees.

Instead, the Congressional Budget Office has reported that this bill would actually increase the PBGC's deficit by $9 billion over the next 10 years. The bill also legalizes cash balance plans without protections for long serving employees. It has been reported that without older worker protections over 90 percent of older workers would lose expected pension benefits if a defined benefit plan were converted to a cash balance plan. Additionally, this bill does nothing to help the struggling airline industry that has already seen United Airlines employees and retirees lose over $3 billion in earned pension benefits.

Strengthening the pension system and providing security to all families should be a priority of Congress and can be achieved with fiscal responsibility and fair policy. This bill falls short on both accounts.

Mr. STARK. Mr. Speaker, I rise today in strong opposition to H.R. 2830, which would be better titled the Republican Pension Destruction Act. American workers deserve much better than a bill that will reduce employee pensions and provide incentives for employers to break pension promises to employees.

Recent bankruptcies in the airline industry shed a bright light on exactly what big corporations are up to. A few months ago, United Airlines dumped its flight attendant pension program onto the Pension Benefit Guaranty Corporation (PBGC)—a government organization meant to serve as an insurance policy for corporations who can no longer afford to meet their pension obligations. The PBGC, however, does not fund pensions at 100 percent, instead making a reduced payment to retired employees.

As a result, tens of thousands of United employees, past and present, will receive smaller pension payments than they deserve. Unbelievably, in the same bankruptcy proceedings United Airline's CEO Glen Tilton was allowed to keep his $4.5 million pension. This is unacceptable, and the bill offered today does nothing to prevent CEOs from opening these golden parachutes while their employees are forced to take a reduction in their benefits.

I've heard from hundreds of constituents on this issue. I can't say it any better than this former United employee from Hayward, CA who made the following statement during an e-hearing I have been co-hosting regarding the United Airlines crisis.

''I worked for United Airlines 35 years as a mechanic. Two years ago I retired with the promise that my pension was safe. If I lose a big chunk of pension I will have to sell my house and take my almost blind wife to another state where it's cheaper to live. Away from our doctors and family. I am not able to

work anymore—physically unable—can you help us?''

We could help United employees and the retirement security of millions of Americans by passing real pension reform, but Republicans would rather destroy pensions instead of protecting them. When Democrats offered legislation to fix the pension solvency issue by protecting retirees and forcing CEOs to be held accountable, the Republican Majority wouldn't bring it up for a vote because it could have passed. Sadly, this is just one more example of Republicans siding with corporate campaign donors instead of working Americans.

The list of problems associated with this bill is seemingly endless. The PBGC itself says its own ability to cover pensions will decrease by $2.5 billion under this bill. The Republican bill does nothing to protect airline employees. And in a final slap in the face to hardworking taxpayers, the bill adds $71 billion to the deficit over the next 10 years, because Republicans refuse to be fiscally responsible and pay for their reforms.

This Republican pension bill undermines retirement security and puts the once guaranteed pension benefits of millions of hard working Americans in jeopardy. I urge all my colleagues to vote ''no'' on this bill.

Ms. KILPATRICK of Michigan. Mr. Speaker, I rise in reluctant support of the Pension Protection Act of 2005, H.R. 2830. I commend the authors of this bill who worked with elements of the union movement to craft legislation designed to address some of the issues affecting the employer-provided pension system. Key stakeholders in Michigan's 13th Congressional District support the bill that we will consider today. Organizations like General Motors, Ford Motor Company, the United Auto Workers Union, building trade unions, Northwest Airlines, airline pilots, flight attendants, and more have contacted my office to express their support for the bill.

The leadership of my party has pointed out that the bill has several major shortcomings. My leadership argues that H.R. 2830 does very little over the long-term to strengthen traditional, defined benefit plans. Had the majority permitted Members on my side of the aisle to amend the bill, I am sure that our suggestions would go a long way to improving the legislative product before us. We, however, are being denied that opportunity, and I must decide what best represents the interests of the income security needs of my Southeast Michigan constituents. After careful examination, I have decided to support the passage of H.R. 2830, but with the hope that it will be improved when a compromised is reached with the other body.

My district is the center of the world automotive industry. As my colleagues know, the economic condition of the GM, Ford Motor and Daimler-Chrysler is under stress. The workers employed in local plant sites throughout the Nation feel their future income security is threatened because their pensions are dependent on the financial health of company-sponsored plans.

All in all, this bill strengthens funding for employer pension plans and includes reforms advocated by companies and unions who participate in multi-employer pension plans. Therefore, I vote for this bill with hope that it will move the process forward to address the pension concerns of the airline industry and airline employees and the concerns of our steelworkers, who take exception with shutdown provisions of the bill to address the pension needs of companies in total ''shutdown'' status.

Mr. DAVIS of Kentucky. Mr. Speaker, I rise today in strong support of H.R. 2830, The Pension Protection Act of 2005. This bill addresses a serious issue facing our Nation. The ultimate enactment of pension reform must be a priority to this House and the Congress.

I congratulate and thank Chairman BOEHNER and Chairman THOMAS for crafting a comprehensive pension reform bill with so much support from the business and the labor communities.

This legislation represents a successful compromise that will help protect workers in the auto industry and also protect the major U.S. auto manufacturers against loss of promised benefits or plan terminations.

One area that remains to be addressed in conference is the issue of airline pension plans. The Cincinnati/Northern Kentucky Airport is one of the Nation's busiest. It is home to Delta Air Lines' second largest hub. Thousands of men and women in Kentucky's Fourth District work for airlines. They depend on the retirement benefits provided by the airline industry.

Without a change in current law that allows air carriers with Defined Benefit plan obligations to make their pension payments over a longer period of time—20 years—it is possible that some or all of these plans will be terminated, benefits reduced and liability shifted to the American taxpayer.

The airlines want to keep their promises to their employees. They want to honor their obligations. They do NOT want to terminate their pension plans nor to reduce benefits. But, they need to be equipped with the tools necessary to have a fighting chance to keep those promises.

The Senate airline pension language is carefully crafted to meet the particular concerns of all the major carriers and provide them with a 20 year period to meet their obligations.

Although we are not addressing this specific issue today, I strongly support continued pursuit in conference of the Senate-passed airline pension provision.

Finally, I wish to thank my colleagues on the Ways and Means and Education and Workforce Committees and their staff for the hard work that has brought us to this point today. I urge all of my colleagues to vote in favor of final passage.

Mr. VISCLOSKY. Mr. Speaker, I rise today in opposition to H.R. 2830. I am old enough to remember a time when everyone on my block in the Glen Park section of Gary, Indiana had a pension. The defined benefit pension system today, which protects the retirement security of over 44 million workers, retirees, and their families, is at a critical juncture. The number of defined benefit plans has declined from over 100,000 in 1985 to under 32,000 in 2004. While the number of active workers covered by such plans has dropped from over 40 million to under 20 million, an additional 20 million retirees depend on defined benefit plans for their retirement security.

Both the Congressional Budget Office and the Pension Benefit Guaranty Corporation have found that H.R. 2830 will add billions more to the PBGC's already mounting deficit. According to the CBO, this legislation would increase the PBGC's deficit by $9 billion dollars over the next ten years. The PBGC is already facing a deficit of $23 billion and could face additional liabilities of up to $100 billion in the near future.

In the five years leading up to the closings of LTV and Bethlehem Steel, steel companies in North America were filing for bankruptcy in record numbers, using the bankruptcy courts to break their contractual obligations and impose cuts or outright elimination of jobs, benefits, pensions and wages of steelworkers. In 2000, LTV Steel filed for Chapter 11 bankruptcy for protection from its creditors, including its obligations to its pension plan. In 2002, LTV filed Section 7 bankruptcy, which liquidated its assets. Today's legislation would put additional pressure on an agency that is already picking up the slack because corporate America has used them as a dumping ground.

In addition, H.R. 2830 does not ensure fair treatment between workers and executives. The bill permits CEOs to receive executive golden parachutes at the same time employees are suffering deep cuts in their promised retirement benefits. Under H.R. 2830, if an employer does not fund its pension plan above 80 percent, then workers cannot receive any increases in benefits or take a lump sum at retirement. No similar restriction is imposed on executives. If an employer does not fund above 60 percent, then the workers' plan must be frozen with no new benefits allowed to accrue. Only at 60 percent are employers prohibited from transferring funds to executive compensation. However, employers can get around this prohibition and make promises of future benefits to executives. I find this deplorable at a time when we are seeing companies like Delphi abuse the system. Under Chapter 11 reorganization, Delphi could award 500 of their executives cash bonuses of 30 percent to 250 percent of their base salary for exiting Chapter 11.

In closing Mr. Speaker, I urge my colleagues to oppose H.R. 2830. According to CBO, H.R. 2830 would increase the Federal deficit by over $70 billion from 2006–2015. It contains a variety of unoffset tax incentives for corporate America that will not secure the pension of the hardworking men and women who are making our steel, mining our coal, building our homes, and flying our airplanes. Congress owes working Americans more.

Mr. PAUL. Mr. Speaker, while H.R. 2830, the Pension Protection Act of 2005, is not perfect, it does decrease the risk that employees will be deprived of pension benefits they were promised as part of their employment contracts. H.R. 2830 also decreases the likelihood that American taxpayers will be forced to bailout private pensions, and reduces the tax burden on American workers to provide them with greater incentives and opportunities to save for their own retirements. Therefore, I will vote for this bill on final passage.

However, I oppose this rule, because I do not like the process under which this bill is being brought to the floor. The rule before us today does not allow any member to offer, or vote on, amendments that may improve this bill. In particular, I was hoping to vote on an amendment protecting United Airline retirees from having their pension benefits reduced or terminated even though United expects to make $1 billion in profit within 1 year of being discharged from bankruptcy. The Senate

version of the bill does address same problems of the airline industry. However it fails to protect United Airlines retirees. The Federal Government should not facilitate a large companies getting out of its contractual obligations to their retired workers. I, therefore, urge my colleagues to protect the pensions of retired United Airline employees by rejecting this rule and voting for a rule that allows us to consider adding, language helping the United Airline retirees to the bill. If this rule does pass, I urge my colleagues to move the process foreword by voting for the bill and working to add language protecting the United Airline pilots to the bill when it goes to conference with the Senate.

Mr. BRADY of Texas. Mr. Speaker, I rise today in strong support of H.R. 2830, the Pension Protection Act of 2005. I applaud the chairman of the Ways and Means Committee, the distinguished BILL THOMAS, as well as the chairman of the Education and Workforce Committee, JOHN BOEHNER, for their hard work and leadership on this issue. Protecting the pensions of millions of Americans is a top priority for this 109th Congress and H.R. 2830 is strong legislation designed to that end.

I rise today to also thank Chairman THOMAS for his inclusion in the Pension Protection Act of legislation I introduced related to the waiver of a 10 percent federal tax penalty for public safety employees—our Nation's firefighters, police officers and emergency medical personnel. People who put their lives on the iine for us everyday deserve our full support and they are receiving that support here today thanks to Chairman THOMAS.

Many public safety personnel begin their careers at a young age. They will vest in their regular pension plans and, even if they participate in one of the new deferred plans and remain on the job longer, will be eligible for retirement before they reach age 55.

For example, in Houston the average firefighter begins his career at age 23. After 20 years of service, now age 43, the average firefighter is fully vested in the regular pension fund and can retire and begin receiving benefits immediately. Today, the firefighter can participate in the deferred plan for up to an additional 10 years. If the firefighter participates for the full 10 years and then elects to retire, he or she will be age 53 and, in general, will not be able to take distributions prior to the age of 59½ without triggering the 10-percent penalty.

For distributions to public safety employees that are subject to the 10-percent penalty, section 905 of H.R. 2830 would waive the penalty. This provision has received considerable attention and support during this and previous Congresses. The effort began in 2002, when my Texas colleague, Congressman GENE GREEN, introduced H.R. 4796. Later that year, Senator JIM INHOFE introduced companion language, S. 3072.

Mr. Speaker, in closing, I want to applaud my House colleagues and, particular, Ways and Means Chairman THOMAS, to whom I would like to express the deep gratitude of our Nation's firefighters, police and emergency medical service employees for including section 905 in the House bill and moving the issue forward.

I strongly urge my colleagues to support passage of H.R. 2830, the Pension Protection Act.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 602, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

Mr. GEORGE MILLER of California. Mr. Speaker, I offer a motion to recommit on behalf of myself and Congressman CARDIN.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GEORGE MILLER of California. Yes, I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. George Miller of California moves to recommit the bill H.R. 2830 to the Committee on Education and the Workforce and the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

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

(a) SHORT TITLE.—This Act may be cited as the ''Pension Protection Act of 2005''.

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

Sec. 1. Short title and table of contents.

TITLE I—INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS

Sec. 101. Interest rate for 2006 and 2007 funding requirements.
Sec. 102. Government Accountability Office pension funding report.

TITLE II—PROTECTING PENSION BENEFITS IN BANKRUPTCY

Sec. 201. Promotion of reasonable alternatives to plan termination.
Sec. 202. Election by employer to restore plan upon emergence from bankruptcy.
Sec. 203. Date on which lien for missed contributions is deemed perfected.

TITLE III—PROTECTION OF PENSION PLANS FOR AIRLINE EMPLOYEES

Sec. 301. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
Sec. 302. Recognition of legally mandated early retirement ages in determining amount of guaranteed benefits.

TITLE IV—FAIRNESS FOR RANK AND FILE EMPLOYEES

Sec. 401. Treatment of nonqualified deferred compensation plans when employer defined benefit plan in at-risk status.
Sec. 402. Nonqualified deferred compensation reduced by percentage of underfunded plan upon bankruptcy of employer.
Sec. 403. Termination fairness standard for nonqualified deferred compensation plans in connection with pension plan terminations based on bankruptcy reorganization.

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

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 501. Funding rules for multiemployer defined benefit plans.
Sec. 502. Additional funding rules for multiemployer plans in endangered or critical status.
Sec. 503. Measures to forestall insolvency of multiemployer plans.
Sec. 504. Special rule for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation.
Sec. 505. Withdrawal liability reforms.
Sec. 506. Special rules for multiple employer plans of certain cooperatives.

PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

Sec. 511. Funding rules for multiemployer defined benefit plans.
Sec. 512. Additional funding rules for multiemployer plans in endangered or critical status.

PART III—SUNSET OF FUNDING RULES

Sec. 516. Sunset of funding rules.

Subtitle B—Deduction and Related Provisions

Sec. 521. Deduction limits for multiemployer plans.
Sec. 522. Transfer of excess pension assets to multiemployer health plan.

TITLE VI—ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS

Sec. 601. AmeriSave matching credit.
Sec. 602. Manner in which AmeriSave matching credit allowed.
Sec. 603. Increasing participation through automatic contribution arrangements.
Sec. 604. Preemption of State laws precluding automatic enrollment or automatic rollovers.
Sec. 605. Fiduciary standards relating to automatic or default investments.
Sec. 606. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.
Sec. 607. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
Sec. 608. Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to individual retirement plans.
Sec. 609. Direct payment of tax refunds to individual retirement plans.
Sec. 610. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
Sec. 611. IRA eligibility for the disabled.

TITLE VII—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

Sec. 701. Treatment of annuity and life insurance contracts with a long-term care insurance feature.
Sec. 702. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.
Sec. 703. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.

TITLE VIII—REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000

Sec. 801. Reduction in benefit of rate reduction for families with incomes over $1,000,000.

## TITLE I—INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS

### SEC. 101. INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS.

(a) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Subclause (II) of section 302(b)(5)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(5)(B)(ii)(II)) is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2008'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

(2) CURRENT LIABILITY.—Subclause (IV) of section 302(d)(7)(C)(i) of such Act (29 U.S.C. 1082(d)(7)(C)(i)(IV)) is amended—

(A) by striking ''or 2005'' and inserting '', 2005, 2006, or 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

(3) RISK-BASED PREMIUMS.—Section 4006(a)(3)(E)(iii)(V) of such Act (29 U.S.C. 1306(a)(3)(E)(iii)(V)) is amended by striking ''January 1, 2006'' and inserting ''January 1, 2008''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2008'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

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

(A) by striking ''or 2005'' and inserting '', 2005, 2006, or 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

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

### SEC. 102. GOVERNMENT ACCOUNTABILITY OFFICE PENSION FUNDING REPORT.

(a) IN GENERAL.—The Comptroller General of the Government Accountability Office shall transmit to the Congress a pension funding report not later than one year after the date of the enactment of this Act.

(b) REPORT CONTENT.—The pension funding report required under subsection (a) shall include an analysis of the feasibility, advantages, and disadvantages of—

(1) requiring an employee pension benefit plan to insure a portion of such plan's total investments;

(2) requiring an employee pension benefit plan to adhere to uniform solvency standards set by the Pension Benefit Guaranty Corporation, which are similar to those applied on a State level in the insurance industry; and

(3) amortizing a single-employer defined benefit pension plan's shortfall amortization base (referred to in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 (as amended by this Act)) over various periods of not more than 7 years.

## TITLE II—PROTECTING PENSION BENEFITS IN BANKRUPTCY

### SEC. 201. PROMOTION OF REASONABLE ALTERNATIVES TO PLAN TERMINATION.

(a) ADDITIONAL REQUIREMENTS FOR DISTRESS TERMINATION.—Section 4041(c)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)(B)) is amended by adding at the end the following:

''(iv) ADDITIONAL REQUIREMENTS.—Notwithstanding any other provision of this section, unless the corporation or the court, in the case of a distress termination pursuant to clause (ii), has determined that reasonable efforts to consider available alternatives to termination (including, but not limited to, alternatives described in section 4042(c)(3)) have been undertaken by such person (and, in the case of a plan maintained pursuant to a collective bargaining agreement, have been undertaken by the bargaining parties in good faith bargaining), the plan may not be terminated. A participant or beneficiary of the plan or an employee organization representing such participants or beneficiaries may bring an action in the appropriate court to challenge such determination by the corporation and seek equitable relief or must be afforded an opportunity to be heard by the appropriate court if a court is making such determination.''.

(b) EFFORTS BY THE CORPORATION AT CONSULTATION WITH PARTIES.—Section 4042(c) of such Act (29 U.S.C. 1342(c)) is amended—

(1) by inserting ''(1)'' after ''(c)'';

(2) by striking ''If the corporation and the plan administrator agree'' and all that follows through ''in subsection (d)(3).'';

(3) by redesignating paragraph (3) as paragraph (2); and

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

''(3)(A) The corporation may not institute proceedings under this section to terminat such plan unless the corporation demonstrates that it has made all reasonable efforts to negoitate with the plan sponsor, the plan participants, and (in the case of a plan maintained pursuant to a collective bargaining agreement) the employee organization representing plan participants for purposes of collective bargaining to determine whether there are any reasonable available alternatives to termination (including, but not limited to, alternatives described subparagraph (B).

''(B) The reasonable alternatives to termination referred to in subparagraph (A) consist of measures which are in the best interest of plan participants and which include (but are not limited to) the following:

''(i) Financing or loans sought by any member of the plan sponsor's controlled group, with or without assistance from the corporation, in order to obtain plan financing, including back-up guarantees to any such financing which the corporation is hereby authorized to provide for such purpose.

''(ii) New plan structures agreed to by the parties, such as transfer of plan liabilities to multiemployer plans, new benefit formulas for new hires or non-vested participants, or other plan restructuring alternatives agreed to by the parties.

''(iii) Reinsurance which the corporation is hereby authorized to obtain for the plan.

''(iv) An agreement by the parties authorizing alternative funding schedules, approved by the corporation, which shall thereafter be treated as meeting the minimum funding requirements for the plan under part 3 of subtitle B of title I.

''(v) Purchase by the plan sponsor of an annuity contract to cover liabilities of the plan, which the corporation is hereby authorized to guarantee as necessary to secure such a contract.''.

(c) REQUIRED COURT DETERMINATIONS.—Section 4042(c) of such Act is amended by adding at the end the following new paragraph:

''(4)(A) A plan may not be terminated under this section unless the court, in the proceedings described in paragraph (1), finds that—

''(i) reasonable efforts to consider available alternatives to termination (including, but not limited to, alternatives described in paragraph (3)) have been undertaken by the plan sponsor (and, in the case of a plan maintained pursuant to a collective bargaining agreement, have been undertaken by the bargaining parties in good faith bargaining),

''(ii) without such termination, a contributing sponsor of the plan (or a member of such a sponsor's controlled group) would be unable to pay its debts when due and—

''(I) if such proceedings include proceedings in which reorganization of such sponsor or member is sought in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State, such sponsor or member could not be discharged in such proceedings, or

''(II) in any other case, such sponsor or member would be unable to continue in business, and

''(iii) all otherwise applicable requirements for termination under this section are met.

''(B) Any party consisting of the plan sponsor, a plan participant, or (in the case of a plan maintained pursuant to a collective bargaining agreement) the employee organization representing plan participants for purposes of collective bargaining may intervene in the proceedings described in paragraph (1) to challenge whether all applicable requirements for termination under this section are met.''.

(d) NOTICE.—

(1) Section 4041(a) of such Act (29 U.S.C. 1341(a) is amended by adding at the end the following new paragraph:

''(4) NOTICE OF RIGHT TO CHALLENGE.—Together with the notice of intent to terminate, the plan administrator shall provide to each participant and beneficiary a written notice of the right of participants and beneficiaries to challenge determinations under this section, written in a manner likely to be understood by the participant or beneficiary.''.

(2) Section 4042(a) of such Act (29 U.S.C. 1342(a)) is amended by adding at the end the following new sentence: ''Prior to commencing proceedings under this section with respect to any plan, the corporation shall provide notice to plan participants and beneficiaries of the right to challenge determinations under this section, written in a manner likely to be understood by the participant or beneficiary.''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to any plans undergoing termination proceedings pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 which are pending on or after the date of the enactment of this Act.

(2) TRANSITIONAL RULE FOR INVOLUNTARY TERMINATIONS.—In any case in which, during the period beginning December 1, 2004, and ending with the date of the enactment of this Act, the Pension Benefit Guaranty Corporation has commenced termination proceedings under section 4042 of the Employee Retirement Income Security Act of 1974 (including the execution of any termination or trust agreement under such section)—

(A) the Corporation or other entity serving as trustee shall, effective as of the date of the enactment of this Act—

(i) cease any activities undertaken to terminate the plan, and

(ii) take such actions as may be necessary to restore the plan to its status immediately prior to the commencement of such proceedings or the execution of such agreement, and

(B) the procedures and requirements of section 4042 of the Employee Retirement Income Security Act of 1974 (as amended by this section) shall apply to any further such proceedings undertaken after the date of the enactment of this Act.

**SEC. 202. ELECTION BY EMPLOYER TO RESTORE PLAN UPON EMERGENCE FROM BANKRUPTCY.**

(a) IN GENERAL.—Section 4047 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1347) is amended—

(1) by inserting ''(a)'' before ''Whenever'', and

(2) by adding at the end the following new subsection:

''(b) Within 3 years after the date on which a plan sponsor of a plan terminated under section 4041(c)(2)(B)(ii) or under section 4042 with respect to a reorganization case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or with respect to a case described in section 4041(c)(2)(B)(i) which has been converted to such a reorganization case), is discharged in such case (or the case is otherwise dismissed), the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection. ''.

(b) PREMIUM RATE FOR TERMINATED SINGLE-EMPLOYER PLANS WHICH ARE NOT RESTORED.—Subsection (a) of section 4006 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306) is amended by adding at the end the following:

''(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

''(A) IN GENERAL.—In any case in which a plan sponsor of a plan terminated under 4041(c)(2)(B)(ii) or under section 4042 with respect to a reorganization case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State, (or with respect to a case described in section 4041(c)(2)(B)(i) which has been converted to such a reorganization case) is discharged in such case (or the case is otherwise dismissed), unless there is in effect an election under section 4047(b) in connection with such case after such discharge (or dismissal), there shall be payable to the corporation, with respect to each applicable 12-month period before the end of the 3-year period after such discharge (or dismissal) for which such election is not in effect, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

''(B) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A), the term 'applicable 12-month period' means—

''(i) the 12-month period beginning with the first month following the month in which the termination date occurs, and

''(ii) each of the first two 12-month periods immediately following the period described in subclause (I).

''(C) COORDINATION WITH SECTION 4007.—

''(i) Notwithstanding section 4007—

''(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

''(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

''(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.

''(D) USE OF FUNDS.—All amounts paid to the corporation under subparagraph (A) shall be deposited in the appropriate fund established under section 4005(a). Amounts deposited under the preceding sentence shall only be available to the corporation for payment of nonforfeitable benefits under the plan to participants of the terminated plan in excess of the corporation's guarantee under section 4022.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

**SEC. 203. DATE ON WHICH LIEN FOR MISSED CONTRIBUTIONS IS DEEMED PERFECTED.**

(a) IN GENERAL.—Section 4041 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

''(f) In the case of the commencement of any reorganization case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State, (a case described in section 4041(c)(2)(B)(i)) by or against a plan sponsor which has been converted to such a reorganization case), any lien or other security of a plan in such plan sponsor for missed contributions to the plan shall be treated as being perfected as of the earlier of the date of the commencement of such case or the date such security or lien is filed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

## TITLE III—PROTECTION OF PENSION PLANS FOR AIRLINE EMPLOYEES

**SEC. 301. SPECIAL FUNDING RULES FOR PLANS MAINTAINED BY COMMERCIAL AIRLINES THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.**

(a) IN GENERAL.—If an election is made to have this section apply to an eligible plan—

(1) in the case of any applicable plan year beginning before January 1, 2007, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (d) for the plan for the plan year, and

(2) in the case of any applicable plan year beginning on or after January 1, 2007, the minimum required contribution determined under sections 303 of such Act and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (d) for the plan for the plan year.

(b) ELIGIBLE PLAN.—For purposes of this section—

(1) IN GENERAL.—The term ''eligible plan'' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act and 412 of such Code applies—

(A) which is sponsored by an employer—

(i) which is a commercial airline passenger airline, or

(ii) the principal business of which is providing catering services to a commercial passenger airline, and

(B) with respect to which the requirements of paragraphs (2) and (3) are met.

(2) ACCRUAL RESTRICTIONS.—

(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act, of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

(B) INCREASES IN SECTION 415 LIMITS DISREGARDED.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this paragraph unless, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term ''applicable benefit increase'' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan.

(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) if the participant—

(A) was receiving disability benefits as of such date, or

(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

(c) ELECTIONS AND RELATED TERMS.—

(1) IN GENERAL.—A plan sponsor shall make the election under subsection (a) at such time and in such manner as the Secretary of the Treasury may prescribe. Except as provided in subsection (h)(5), such election, once made, may be revoked only with the consent of such Secretary.

(2) YEARS FOR WHICH ELECTION MADE.—

(A) IN GENERAL.—The plan sponsor may select the first plan year to which the election under subsection (a) applies from among plan years ending after the date of the election. The election shall apply to such plan year and all subsequent years.

(B) ELECTION OF NEW PLAN YEAR.—The plan sponsor may specify a new plan year in the election under subsection (a) and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

(3) APPLICABLE PLAN YEAR.—The term ''applicable plan year'' means each plan year to which the election under subsection (a) applies under paragraph (1).

(d) MINIMUM REQUIRED CONTRIBUTION.—

(1) IN GENERAL.—In the case of any applicable plan year during the amortization period,

the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act and section 412(a)(2)(A) of such Code shall apply to such plan, but any charge or credit in the funding standard account under section 302 of such Act of section 412 of such Code shall be zero.

(3) DEFINITIONS.—For purposes of this section—

(A) UNFUNDED LIABILITY.—The term ''unfunded liability'' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

(B) AMORTIZATION PERIOD.—The term ''amortization period'' means the 20-plan year period beginning with the first applicable plan year.

(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section, shall apply,

(B) the rate of interest under section 302(b) of such Act and section 412(b) of such Code, as so in effect, shall be used for all calculations requiring an interest rate, and

(C) the value of plan assets shall be equal to their fair market value.

(5) SPECIAL RULE FOR CERTAIN PLAN SPIN-OFFS.—For purposes of subsection (a), if, with respect to any eligible plan to which this subsection applies—

(A) any applicable plan year includes the date of the enactment of this Act, and

(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under subsection (a)(1) for the eligible plan for such applicable plan year shall be determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of the minimum required contribution between such plans for the applicable plan year and direct the appropriate reallocation between the plans of any contributions for the applicable plan year.

(e) FUNDING STANDARD ACCOUNT AND PREFUNDING BALANCE.—Any charge or credit in the funding standard account under section 302 of such Act or section 412 of such Code, and any prefunding balance under section 303 of such Act or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

(f) AMENDMENTS TO OTHER PROVISIONS.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a)(36) of the Internal Revenue Code of 1986, as added by section 402 of this Act, is amended by adding at the end the following: ''This paragraph shall also apply to any plan during any period during which an amortization schedule under section 403 of the Pension Security and Transparency Act of 2005 is in effect.''

(2) PBGC LIABILITY LIMITED.—Section 4022 of the Employee Retirement Income Security Act of 1974, as amended by this Act, is amended by adding at the end the following new subsection:

''(g) SPECIAL RULE FOR PLANS ELECTING CERTAIN FUNDING REQUIREMENTS.—During any period in which an election by a plan under section 301 of the Pension Protection Act of 2005 is in effect, then this section and section 4044(a)(3) shall be applied by treating the first day of the first applicable plan year as the termination date of the plan. This subsection shall not apply to any plan for which an election under section 403(h) of such Act is in effect.''.

(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iii) of the Internal Revenue Code of 1986, as added by this Act, is amended by adding at the end the following new sentence: ''This clause shall also apply to any plan for a plan year if an election under section 403 of the Pension Security and Transparency Act of 2005 is in effect for such year.''

(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) SPECIAL RULES FOR TERMINATION OF ELIGIBLE PLANS.—During any period an election is in effect under this section with respect to an eligible plan, the Pension Benefit Guaranty Corporation shall, before it seeks or approves a termination of such plan under section 4041(c) or 4042 of the Employee Retirement Income Security Act of 1974—

(1) make a determination under section 4041(c)(4) or 4042(i) of such Act whether the termination would be necessary if the Secretary of the Treasury were to enter into an agreement under section 4047(a) of such Act which provides an alternative funding agreement to replace the amortization schedule under this section, and

(2) if the Corporation determines such an agreement would make such termination unnecessary, take all necessary actions to ensure the agreement is entered into.

The Pension Benefit Guaranty Corporation shall make the determination under paragraph (1) within 90 days of receiving all information needed in connection with a request for a termination (or if no such request is made, within 90 days of consideration of the termination by the Corporation).

(h) CERTAIN BENEFIT ACCRUALS AND INCREASES ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO COVER COSTS.—

(1) IN GENERAL.—If an employer elects the application of this subsection—

(A) the requirements of paragraphs (2) and (3) of subsection (b) shall not apply with respect to any eligible plan maintained by the employer and specified in the election, and

(B) the minimum required contribution under subsection (d) for any plan year with respect to the plan shall be increased by the amounts described in paragraphs (2) and (3). Any liabilities and assets taken into account under this subsection shall not be taken into account in determining the unfunded liability of the plan for purposes of subsection (d).

(2) CURRENT FUNDING OF ACCRUALS AND INCREASES.—The amount determined under this paragraph for any plan year is the target normal cost which would occur under section 302 of such Act and 412 of such Code if—

(A) any benefit accrual, or benefit increase taking effect, during the plan year by reason of this subsection were treated as having been accrued or earned during the plan year, and

(B) the plan were treated as if it were subject to section 302(d) of such Act and section 412(d) of such Code.

(3) FUNDING MUST BE MAINTAINED.—The amount determined under this paragraph for any plan year is the amount charged to the funding standard account under section 302(d) of such Act and section 412(d) of such Code if—

(A) the funding target were determined by only taking into account benefits to which paragraph (2) applied for preceding plan years,

(B) the only assets taken into account were the contributions required under this paragraph and paragraph (2) for preceding plan years (and any earnings thereon),

(C) the amortization period included only the plan year,

(D) the transition rule under section 303(c)(4)(B) of such Act and section 430(c)(4)(B) of such Code did not apply, and

(E) the plan were treated as if it were subject to section 302(d) of such Act and section 412(d) of such Code.

(4) SPECIAL RULES FOR YEARS BEFORE 2007.—Notwithstanding any other provision of this Act, in the case of an applicable plan year of an eligible plan to which this subsection applies which begins before January 1, 2007, in determining the amounts described in paragraphs (2) and (3) for such plan year—

(A) the provisions of, and amendments made by, sections 101, 102, 111, and 112 shall apply to such plan year, except that

(B) the interest rate used under section 303 of such Act and section 430 of such Code for purposes of applying paragraphs (2) and (3) to such plan year shall be the interest rate determined under section 302(b)(5) of such Act and section 412(b)(5) of such Code, as in effect for plan years beginning in 2005.

(5) ELECTION OUT OF SECTION.—An employer maintaining an eligible plan to which this subsection applies may make a one-time election with respect to any applicable plan year not to have this section apply to such plan year and all subsequent plan years. Subject to subsection (d)(2), the minimum required contribution under section 302 of such Act and 412 of such Code for all such plan years shall be determined without regard to this section.

(i) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—Section 410(b)(3) of such Code is amended by striking the last sentence and inserting the following: ''For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning before, on, or after the date of the enactment of this Act.

(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

**SEC. 302. RECOGNITION OF LEGALLY MANDATED EARLY RETIREMENT AGES IN DETERMINING AMOUNT OF GUARANTEED BENEFITS.**

(a) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(3)) is amended, in the flush matter following subparagraph (B), by

adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining a specified age which is less than age 65, the first sentence of this paragraph shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(b) AGGREGATE LIMIT ON BENEFIT GUARANTEED.—Section 4022B(a) of such Act (29 U.S.C. 1322b(a)) is amended by adding at the end the following: ''If, as of such date, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining a specified age which is less than age 65, this subsection shall be applied to an individual who is a participant in any such plan by reason of such service by substituting such age for age 65.''.

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to benefits payable on or after the date of the enactment of this Act.

## TITLE IV—FAIRNESS FOR RANK AND FILE EMPLOYEES

### SEC. 401. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) EMPLOYER'S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—

''(A) If—

''(i) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status, assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

''(ii) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors.

''(B) AT-RISK STATUS.—For purposes of subparagraph (A), a plan is in an at-risk status if the funded current liability percentage (as defined in section 412(l)(8)), reduced as described in subparagraph (E) thereof, of the plan is less than 60 percent. ''.

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

### SEC. 402. NONQUALIFIED DEFERRED COMPENSATION REDUCED BY PERCENTAGE OF UNDERFUNDED PLAN UPON BANKRUPTCY OF EMPLOYER.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding), as amended by section 302, is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) REDUCTION IN ALLOWABLE DEFERRED COMPENSATION UPON BANKRUPTCY.—

''(A) Upon the commencement of any reorganization case under title 11 of the United States Code, or under any similar Federal or State law—

''(i) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status, assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

''(ii) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

the employer shall reduce the amount of benefit under the non-qualified plan by the applicable percentage of underfunding in the pension plan.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is the excess (if any) of 100 percentage points over the funded current liability percentage (as defined in section 412(l)(8)), reduced as described in subparagraph (E) thereof.

''(C) ADDITIONAL TAX.—The tax imposed by this chapter for any taxable year on any taxpayer with respect to whom a benefit is reduced under subparagraph (A) shall be increased by 100 percent of the amount of such reduction. Such amount shall not be treated as a tax for purposes of section 26(b)(2).''.

(b) CONFORMING AMENDMENTS.—Paragraphs (5) and (6) of section 409A(b) of such Code, as redesignated by subsection (a) of this subsection, are each amended by striking ''or (3)'' each place it appears and inserting ''(3), or (4)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

### SEC. 403. TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.

(a) IN GENERAL.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

''(g) TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.—

''(1) IN GENERAL.—In any case in which a corporation is a plan sponsor of a defined benefit plan with respect to which a plan amendment is adopted that has the effect of implementing a distress termination of the plan under section 4041(c) based on bankruptcy reorganization or a termination of the plan initiated by the Pension Benefit Guaranty Corporation under section 4042 based on bankruptcy reorganization, in any case in which the plan is not sufficient for guaranteed benefits (within the meaning of section 4041(d)(2)) as of the proposed termination date, any covered deferred compensation plan established or maintained by such plan sponsor after the date of the adoption of such plan amendment shall meet the termination fairness standard of this subsection with respect to such plan amendment.

''(2) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to a plan amendment described in paragraph (1) if, during the 5-year period beginning on the date of the adoption of such plan amendment—

''(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan (irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation), and

''(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is adopted during or after such 1-year period), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) NOTICE DATE.—The term 'notice date' means, with respect to an amendment described in paragraph (1)—

''(i) in the case of a distress termination under section 4041(d), the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2), and

''(ii) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042, the date of the application to the court under section 4042(c).

''(B) COVERED DEFERRED COMPENSATION PLAN.—

''(i) IN GENERAL.—The term 'covered deferred compensation plan' means any plan providing for the deferral of compensation of a disqualified individual, whether or not—

''(I) compensation of the disqualified individual which is deferred under such plan is subject to substantial risk of forfeiture,

''(II) the disqualified individual's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the plan sponsor,

''(III) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation (including income), and all income attributable to such amounts, remain (until made available to the disqualified individual or other beneficiary) solely the property of the plan sponsor (without being restricted to the provision of benefits under the plan),

''(IV) the amounts referred to in subclause (III) are available to satisfy the claims of the plan sponsor's general creditors at all times (not merely after bankruptcy or insolvency), and

''(V) some or all of the compensation of the disqualified individual which is deferred under such plan is guaranteed by an insurance company, insurance service, or other similar organization.

''(ii) EXCEPTION FOR QUALIFIED PLANS.—Such term shall not include a plan that is—

''(I) described in section 219(g)(5)(A) of the Internal Revenue Code of 1986, or

''(II) an eligible deferred compensation plan (as defined in section 457(b) of such Code) of an eligible employer described in section 457(e)(1)(A) of such Code.

''(iii) PLAN INCLUDES ARRANGEMENTS, ETC.—For purposes of this subparagraph, the term 'plan' includes any agreement or arrangement.

''(C) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means a director or executive officer of the plan sponsor.

''(D) TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—A termination of a plan which is a distress termination under section 4041(c) or a termination instituted by the Pension Benefit Guaranty Corporation under section 4042 is 'based on bankruptcy reorganization' if such termination is based in whole or in part on the filing, by or against any person who is a contributing sponsor of such plan or a member of such sponsor's controlled group, of a petition seeking reorganization in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or such a case in which liquidation is sought has been converted to a case in which reorganization is sought).

''(E) TITLE IV TERMINOLOGY.—Any term used in this subsection which is defined in section 4001(a) shall have the meaning provided such term in section 4001(a).

''(4) SPECIAL RULES.—

''(A) COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in paragraph (1), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

''(B) MULTIPLE AMENDMENTS.—The Secretary shall issue regulations to prevent the avoidance of the purposes of this subsection through the use of 2 or more plan amendments rather than a single amendment.

''(C) CONTROLLED GROUPS, ETC.—For purposes of this subsection, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

''(D) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income attributable to such compensation or such income.

''(5) COORDINATION.—The Secretary and the Secretary of the Treasury shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which both such Secretaries have responsibility under this subsection and section 4980H of the Internal Revenue Code of 1986 are administered so as to have the same effect at all times.

''(6) EFFECT OF WAIVER GRANTED BY SECRETARY OF THE TREASURY.—To the extent that any requirement of the termination fairness standard of section 4980H(a)(2) of the Internal Revenue Code of 1986 is waived by the Secretary of the Treasury with respect to any disqualified individual under section 4980H(g) of such Code in the case of any plan amendment having the effect of a termination described in paragraph (1) of this subsection, such requirement under the termination fairness standard of paragraph (2) of this subsection shall not apply with respect to such individual in the case of such plan amendment.''.

(b) EXCISE TAX ON FUNDING NONQUALIFIED DEFERRED COMPENSATION PLANS IN THE EVENT OF A PENSION PLAN TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—

(1) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

**''SEC. 4980H. FUNDING NONQUALIFIED DEFERRED COMPENSATION PLANS.**

''(a) IMPOSITION OF TAX IN THE EVENT OF A PENSION PLAN TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—

''(1) IN GENERAL.—In any case in which a corporation is a plan sponsor of a defined benefit plan with respect to which an plan amendment is adopted that has the effect of implementing a distress termination of the plan under section 4041(c) of the Employee Retirement Income Security Act of 1974 based on bankruptcy reorganization or a termination of the plan initiated by the Pension Benefit Guaranty Corporation under section 4042 of such Act based on bankruptcy reorganization, in any case in which the plan is not sufficient for guaranteed benefits (within the meaning of section 4041(d)(2) of such Act) as of the proposed termination date, there is hereby imposed a tax on any failure to meet the termination fairness standard of paragraph (2) with respect to such plan amendment.

''(2) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to a plan amendment described in paragraph (1) if, during the 5-year period beginning on the date of the adoption of such plan amendment—

''(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan, irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation, and

''(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is adopted during or after such 1-year period), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

''(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to the amount of the accrual described in subsection (a)(2)(A) comprising the failure or the distribution described in subsection (a)(2)(B) comprising the failure.

''(c) LIABILITY FOR TAX.—The plan sponsor shall be liable for the tax imposed by this section.

''(d) DEFINITIONS.—For purposes of this section—

''(1) NOTICE DATE.—The term 'notice date' means with respect to an amendment described in subsection (a)(1)—

''(A) in the case of a distress termination under section 4041(d) of the Employee Retirement Income Security Act of 1974, the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2) of such Act, and

''(B) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042 of such Act, the date of the application to the court under section 4042(c) of such Act.

''(2) COVERED DEFERRED COMPENSATION PLAN.—

''(A) IN GENERAL.—The term 'covered deferred compensation plan' means any plan providing for the deferral of compensation of a disqualified individual, whether or not—

''(i) compensation of the disqualified individual which is deferred under such plan is subject to substantial risk of forfeiture,

''(ii) the disqualified individual's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the plan sponsor,

''(iii) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the (without being restricted to the provision of benefits under the plan),

''(iv) the amounts referred to in clause (iii) are available to satisfy the claims of the plan sponsor's general creditors at all times (not merely after bankruptcy or insolvency), and

''(v) some or all of the compensation of the disqualified individual which is deferred under such plan is guaranteed by an insurance company, insurance service, or other similar organization.

''(B) EXCEPTION FOR QUALIFIED PLANS.—Such term shall not include a plan that is—

''(i) described in section 219(g)(5)(A), or

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

''(C) PLAN INCLUDES ARRANGEMENTS, ETC.—For purposes of this paragraph, the term 'plan' includes any agreement or arrangement.

''(3) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means a director or executive officer of the plan sponsor.

''(4) TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—A termination of a plan which is a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 or a termination instituted by the Pension Benefit Guaranty Corporation under section 4042 of such Act is 'based on bankruptcy reorganization' if such termination is based in whole or in part on the filing, by or against any person who is a contributing sponsor of such plan or a member of such sponsor's controlled group, of a petition seeking reorganization in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or such a case in which liquidation is sought has been converted to a case in which reorganization is sought).

''(5) TITLE IV TERMINOLOGY.—Any term used in this section which is defined in section 4001(a) of the Employee Retirement Income Security Act of 1974 shall have the meaning provided such term in such section 4001(a).

''(e) SPECIAL RULES.—

''(1) COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subsection (a)(1), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

''(2) MULTIPLE AMENDMENTS.—The Secretary shall issue regulations to prevent the avoidance of the purposes of this section through the use of 2 or more plan amendments rather than a single amendment.

''(3) CONTROLLED GROUPS, ETC.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

''(4) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income attributable to such compensation or such income.

''(f) COORDINATION.—The Secretary and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which both such Secretaries have responsibility under this section

and section 206(g) of the Employee Retirement Income Security Act of 1974 are administered so as to have the same effect at all times.

''(g) WAIVER.—

''(1) IN GENERAL.—In the case of any plan amendment having the effect of a termination described in subsection (a)(1), the Secretary may waive the application of any requirement of the termination fairness standard of subsection (a)(2) with respect to any disqualified individual who first commences service for the plan sponsor after the notice date with respect to such plan amendment. The Secretary may grant any such waiver in the case of any such plan amendment with respect to any such disqualified individual only after consultation with the Pension Benefit Guaranty Corporation. The Secretary shall promptly notify the Secretary of Labor of any such waiver granted by the Secretary.

''(2) REQUIREMENTS FOR WAIVER.—A waiver may be granted under paragraph (1) only—

''(A) upon the filing with the Secretary by the plan sponsor of an application for such waiver, in such form and manner as shall be prescribed in regulations of the Secretary,

''(B) upon a showing, to the satisfaction of the Secretary, that such waiver is a business necessity for the plan sponsor, as determined under such regulations, and is in the interest of plan participants and beneficiaries, as determined under such regulations, and

''(C) after the participants, in such form and manner as shall be provided in such regulations, have been notified of the filing of the application for the waiver and have been provided a reasonable opportunity to provide in advance comments to the Secretary regarding the proposed waiver.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

''Sec. 4980H. Funding nonqualified deferred compensation plans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) plan amendments adopted on or after May 10, 2005, and

(2) plan amendments adopted before such date implementing a plan termination as described in section 206(g)(1) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)) or section 4980H(a)(1)(A) of the Internal Revenue Code of 1986 (as added by subsection (b)) based on a bankruptcy reorganization in a case under title 11 of the United States Code (or under any similar law of a State or a political subdivision of a State) pending on such date.

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

### Subtitle A—Funding Rules

### PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

#### SEC. 501. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by this Act) is amended by inserting after section 303 the following new section:

''MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

''SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

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

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

''(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 302(b) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

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

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

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

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

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

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

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 of the Internal Revenue Code of 1986 in such manner as is determined by the Secretary of the Treasury.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

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

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

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

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would

be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

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

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

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

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

''(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

''(i) submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

''(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary of the Treasury shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

''(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

''(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

''(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

''(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

''(iv) the notice required under paragraph (3)(A) has been provided.

''(2) ADDITIONAL EXTENSION.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may extend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

''(B) DETERMINATION.—The Secretary make grant an extension under subparagraph (A) if the Secretary determines that—

''(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

''(ii) the failure to permit such extension would—

''(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

''(II) be adverse to the interests of plan participants in the aggregate.

''(C) ACTION BY SECRETARY.—The Secretary of the Treasury shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21)) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) SHORTFALL FUNDING METHOD.—

(1) IN GENERAL.—A multiemployer plan meeting the criteria of paragraph (2) may adopt, use, or cease using, the shortfall funding method and such adoption, use, or cessation of use of such method, shall be deemed approved by the Secretary of the Treasury under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(e)(1) of the Internal Revenue Code of 1986.

(2) CRITERIA.—A multiemployer pension plan meets the criteria of this clause if—

(A) the plan has not used the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method under paragraph (1); and

(B) the plan is not operating under an amortization period extension under section 304(d) of such Act and did not operate under such an extension during such 5-year period.

(3) SHORTFALL FUNDING METHOD DEFINED.—For purposes of this subsection, the term ''shortfall funding method'' means the shortfall funding method described in Treasury Regulations section 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

(4) BENEFIT RESTRICTIONS TO APPLY.—The benefit restrictions under section 302(c)(7) of such Act and section 412(d)(7) of such Code shall apply during any period a multiemployer plan is on the shortfall funding method pursuant to this subsection.

(5) USE OF SHORTFALL METHOD NOT TO PRECLUDE OTHER OPTIONS.—Nothing in this subsection shall be construed to affect a multiemployer plan's ability to adopt the shortfall funding method with the Secretary's permission under otherwise applicable regulations or to affect a multiemployer plan's right to change funding methods, with or without the Secretary's consent, as provided in applicable rules and regulations.

(c) CONFORMING AMENDMENTS.—

(1) Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by this Act) is amended by inserting after the item relating to section 303 the following new item:

''Sec. 304. Minimum funding standards for multiemployer plans.''.

(d) EFFECTIVE DATE.—

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

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

**SEC. 502. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended by inserting after section 304 the following new section:

''ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

''SEC. 305. (a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

''(1) if the plan is in endangered status—

''(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

''(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

''(2) if the plan is in critical status—

''(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

''(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

''(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

''(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years,

taking into account any extension of amortization periods under section 304(d).

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

''(A) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 5 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if—

''(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 304(d), or

''(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 304(d).

''(C) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value of the reasonably anticipated employer contributions for the current plan year,

''(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

''(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

''(D) A plan is described in this subparagraph if the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury—

''(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year, and

''(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

''(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(i) IN GENERAL.—In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years, using reasonable actuarial estimates, assumptions, and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The projected present value of liabilities as of the beginning of such year shall be determined based on the actuarial statement required under section 103(d) with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year.

''(ii) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any actuarial projection of plan assets shall assume—

''(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

''(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary.

''(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the funding improvement plan—

''(i) in the case of a plan in seriously endangered status, shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, including a description of the reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to meet the applicable requirements if the plan sponsor assumes that there are no increases in contributions under the plan other than the increases necessary to meet the applicable requirements after future benefit accruals have been reduced to the maximum extent permitted by law, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

''(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

''(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will result in the plan meeting the requirements of this paragraph.

''(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

''(i) such percentage as of the beginning of such period, plus

''(ii) 10 percent of the percentage under clause (i).

''(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

''(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

''(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

''(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

''(B) COORDINATION WITH CHANGES IN STATUS.—

''(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

''(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

''(C) PLANS IN ENDANGERED STATUS AT END OF PERIOD.—If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

''(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

''(i) The plan's funded percentage as of the close of the funding improvement period must equal or exceed a percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

''(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

''(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

''(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, and

''(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

''(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

''(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104.

''(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

''(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

''(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law, and

''(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

''(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

''(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

''(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

''(3) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the rehabilitation plan—

''(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 204(g)) have been reduced to the maximum extent permitted by law.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

''(3) REHABILITATION PLAN.—For purposes of this section—

''(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

''(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

''(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

''(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

''(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104.

''(ii) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(C) DEFAULT SCHEDULE.—If the collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

''(4) REHABILITATION PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

''(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to use of the shortfall method or any extension of amortization periods under section 304(d).

''(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

''(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

''(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

''(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

''(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

''(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

''(1) COMPLIANCE WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

''(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

''(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

''(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 204(g), the plan shall not pay—

''(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)),

''(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(iii) any other payment specified by the Secretary of the Treasury by regulations.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 203(e) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

''(3) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

''(4) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the rehabilitation plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of

qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.

''(5) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan—

''(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

''(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

''(h) NONBARGAINED PARTICIPATION.—

''(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and to employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

''(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

''(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

''(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means—

''(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

''(ii) in the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the association of employers that is the employee settlor of the plan; and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage equal to a fraction—

''(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

''(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 304(c)(3).

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 304(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a).

''(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

''(9) PLAN SPONSOR.—In the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''.

(b) CAUSE OF ACTION TO COMPEL ADOPTION OF FUNDING IMPROVEMENT OR REHABILITATION PLAN.—Section 502(a) of the Employee Retirement Income Security Act of 1974 is amended by striking ''or'' at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ''; or'' and by adding at the end the following:

''(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 305, if the plan sponsor has not adopted a funding improvement or rehabilitation plan under subsection (c) or (e) of that section by the deadline established in that section, by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan.''.

(c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h), and inserting after subsection (f) the following:

''(g) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—No tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This subsection shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan) and shall not apply if an excise tax is required to be imposed under this section by reason of a violation of such section 305.''.

(d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

(1) Section 302(b) of the Employee Retirement Income Security Act of 1974, as amended by this Act , is amended by adding at the end the following new paragraph:

''(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) and complies with such rehabilitation plan (and any modifications of the plan).''.

(2) Section 412(c) of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new paragraph:

''(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan).''.

(e) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended by inserting after the item relating to section 304 the following new item:

''Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.

**SEC. 503. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section

4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after 2006.

**SEC. 504. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION.**

In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—

(1) increases benefits, and

(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383),

the amendments made by sections 201, 202, 211, and 212 of this Act shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).

**SEC. 505. WITHDRAWAL LIABILITY REFORMS.**

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY OF INSOLVENT EMPLOYERS.—

(1) IN GENERAL.—Subsections (b) and (d) of section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) are repealed.

(2) CONFORMING AMENDMENTS.—Subsections (c) and (e) of section 4225 of such Act are redesignated as subsections (b) and (c), respectively.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) WITHDRAWAL LIABILITY CONTINUES IF WORK CONTRACTED OUT.—

(1) IN GENERAL.—Clause (i) of section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended by inserting ''or to an entity or entities owned or controlled by the employer'' after ''to another location''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work transferred on or after the date of the enactment of this Act.

(c) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

**SEC. 506. SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES.**

(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan for its plan year which includes such date, the amendments made by this subtitle and subtitle B shall not apply to plan years beginning before the earlier of—

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

(2) January 1, 2017.

(b) ELIGIBLE COOPERATIVE PLANS.—For purposes of this section, the term ''eligible cooperative plan'' means a plan which is maintained by more than 1 employer and at least 85 percent of the employers are—

(1) rural cooperatives (as defined in section 401(k)(7)(B) of the Internal Revenue Code of 1986 without regard to clause (iv) thereof),

(2) rural telephone cooperative associations described in section 3(40)(B)(v) of the Employee Retirement Income Security Act of 1974 which is not described in paragraph (1), or

(3) organizations described in section 1381(a) of such Code more than 50 percent of the ownership or capital and profits interests of which are held—

(A) by producers of agricultural products, or

(B) organizations described in section 1381(a) of such Code meeting the requirements of subparagraph (A).

## PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

**SEC. 511. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as added by this Act) is amended by inserting after section 430 the following new section:

**''SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

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

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 of the Employee Retirement Income Security Act of 1974.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

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

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

''(C) the amount of the waived funding deficiency (within the meaning of section 412(d)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

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

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

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

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

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

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

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

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

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

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

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

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

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

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

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

''(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

''(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

''(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

''(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

''(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

''(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

''(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

''(iv) the notice required under paragraph (3)(A) has been provided.

''(2) ADDITIONAL EXTENSION.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

''(B) DETERMINATION.—The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

''(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

''(ii) the failure to permit such extension would—

''(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

''(II) be adverse to the interests of plan participants in the aggregate.

''(C) ACTION BY SECRETARY.—The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) EFFECTIVE DATE.—

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

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

**SEC. 512. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as amended by this Act) is amended by inserting after section 431 the following new section:

**''SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

''(a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

''(1) if the plan is in endangered status—

''(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

''(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

''(2) if the plan is in critical status—

''(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

''(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

''(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

''(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

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

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

''(A) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 5 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if—

''(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

''(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

''(C) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value of the reasonably anticipated employer contributions for the current plan year,

''(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

''(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

''(D) A plan is described in this subparagraph if the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary—

''(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year, and

''(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

''(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(i) IN GENERAL.—In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years, using reasonable actuarial estimates, assumptions, and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The projected present value of liabilities as of the beginning of such year shall be determined based on the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year.

''(ii) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any actuarial projection of plan assets shall assume—

''(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

''(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4) of such Act.

''(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary, and the Secretary of Labor.

''(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the funding improvement plan—

''(i) in the case of a plan in seriously endangered status, shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, including a description of the reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to meet the applicable requirements if the plan sponsor assumes that there are no increases in contributions under the plan other than the increases necessary to meet the applicable requirements after future benefit accruals have been reduced to the maximum extent permitted by law, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

''(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

''(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will result in the plan meeting the requirements of this paragraph.

''(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

''(i) such percentage as of the beginning of such period, plus

''(ii) 10 percent of the percentage determined under clause (i).

''(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

''(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

''(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

''(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

''(B) COORDINATION WITH CHANGES IN STATUS.—

''(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

''(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

''(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

''(i) The plan's funded percentage as of the close of the funding improvement period must equal or exceed a percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

''(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

''(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

''(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, and

''(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

''(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

''(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

''(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

''(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

''(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

''(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law, and

''(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

''(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

''(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

''(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

''(3) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the rehabilitation plan—

''(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a

plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

''(3) REHABILITATION PLAN.—For purposes of this section—

''(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

''(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

''(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

''(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

''(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

''(ii) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(C) DEFAULT SCHEDULE.—If the collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

''(4) REHABILITATION PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

''(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to use of the shortfall method or any extension of amortization periods under section 431(d).

''(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

''(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

''(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

''(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

''(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

''(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

''(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

''(1) COMPLIANCE WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

''(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

''(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

''(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

''(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(b)(1)(A)),

''(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(iii) any other payment specified by the Secretary by regulations.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

''(3) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

''(4) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the rehabilitation plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

''(5) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan—

''(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

''(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount

equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by section 4971 to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

''(h) NONBARGAINED PARTICIPATION.—

''(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and to employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

''(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

''(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

''(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means—

''(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

''(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employee settlor of the plan; and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage equal to a fraction—

''(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

''(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 412(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

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

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

''(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

''(9) PLAN SPONSOR.—In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.

## PART III—SUNSET OF FUNDING RULES

### SEC. 516. SUNSET OF FUNDING RULES.

(a) REPORT.—Not later than December 31, 2011, the Secretary of Labor, the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation shall conduct a study of the effect of the amendments made by this subtitle on the operation and funding status of multiemployer plans and shall report the results of such study, including any recommendations for legislation, to the Congress.

(b) MATTERS INCLUDED IN STUDY.—The study required under subsection (a) shall include—

(1) the effect of funding difficulties, funding rules in effect before the date of the enactment of this Act, and the amendments made by this subtitle on small businesses participating in multiemployer plans,

(2) the effect on the financial status of small employers of—

(A) funding targets set in funding improvement and rehabilitation plans and associated contribution increases,

(B) funding deficiencies,

(C) excise taxes,

(D) withdrawal liability,

(E) the possibility of alternatives schedules and procedures for financially-troubled employers, and

(F) other aspects of the multiemployer system, and

(3) the role of the multiemployer pension plan system in helping small employers to offer pension benefits.

(c) SUNSET.—

(1) IN GENERAL.—Except as provided in this subsection, notwithstanding any other provision of this Act, the provisions of, and the amendments made by, this subtitle shall not apply to plan years beginning after December 31, 2014, and the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 shall be applied to such plan years under the provisions of sections 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(2) FUNDING IMPROVEMENT AND REHABILITATION PLANS.—If a plan is operating under a funding improvement or rehabilitation plan under section 305 of such Act or 432 of such Code for its last year beginning before January 1, 2015, such plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, such funding improvement or rehabilitation plan is in effect and all provisions of such Act or Code relating to the operation of such funding improvement or rehabilitation plan shall continue in effect during such period.

(3) AMORTIZATION SCHEDULES.—In the case of any amount amortized under section 304(b) of such Act or 431 of such Code (as in effect after the amendments made by this subtitle) over any period beginning with a plan year beginning before January 1, 2015, such amount shall, in lieu of the amortization which would apply after the application of this subsection, continue to be amortized under such section 304 or 431 (as so in effect).

## Subtitle B—Deduction and Related Provisions

### SEC. 521. DEDUCTION LIMITS FOR MULTIEMPLOYER PLANS.

(a) INCREASE IN DEDUCTION.—Section 404(a)(1)(D) of the Internal Revenue Code of 1986, as amended by this Act, is amended to read as follows:

''(D) AMOUNT DETERMINED ON BASIS OF UNFUNDED CURRENT LIABILITY.—

''(i) IN GENERAL.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability of the plan.

''(ii) UNFUNDED CURRENT LIABILITY.—For purposes of clause (i), the term 'unfunded current liability' means the excess (if any) of—

''(I) 140 percent of the current liability of the plan determined under section 431(c)(6)(C), over

''(II) the value of the plan's assets determined under section 431(c)(2).''.

(b) EXCEPTION FROM LIMITATION ON DEDUCTION WHERE COMBINATION OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 404(a)(7)(C) of such Code, as amended by this Act, is amended by adding at the end the following new clause:

''(v) MULTIEMPLOYER PLANS.—In applying this paragraph, any multiemployer plan shall not be taken into account.''.

(2) CONFORMING AMENDMENT.—Section 404(a)(7)(A) of such Code is amended by striking the last sentence.

(c) EFFECTIVE DATES.—

(1) DEDUCTION LIMIT.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2006.

(2) EXCEPTION.—The amendments made by subsection (b) shall apply to years beginning after December 31, 2005.

**SEC. 522. TRANSFER OF EXCESS PENSION ASSETS TO MULTIEMPLOYER HEALTH PLAN.**

(a) IN GENERAL.—Section 420(e) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(5) APPLICATION TO MULTIEMPLOYER PLAN.—In the case of any plan to which section 404(c) applies (or any successor plan primarily covering employees in the building and construction industry)—

''(A) the prohibition under subsection (a) on the application of this section to a multiemployer plan shall not apply, and

''(B) this section shall be applied to any such plan—

''(i) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

''(ii) in accordance with such modifications of this section (and the provisions of this title and the Employee Retirement Income Security Act of 1974 relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.''

(b) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(3) Section 408(b)(13) of such Act (29 U.S.C. 1108(b)(13)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers made in taxable years beginning after December 31, 2004.

## TITLE VI—ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS

**SEC. 601. AMERISAVE MATCHING CREDIT.**

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

**''SEC. 36. AMERISAVE MATCHING CREDIT.**

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 100 percent of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed the applicable limit.

''(b) APPLICABLE LIMIT.—For purposes of this section—

''(1) IN GENERAL.—The applicable limit is $1,000, reduced (but not below zero) by the reduction amount for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount.

''(2) REDUCTION AMOUNT; THRESHOLD AMOUNT.—For purposes of paragraph (1), the reduction amount and the threshold amount shall be determined in accordance with the following table:

| ''In the case of | The reduction amount is: | The threshold amount is: |
|---|---|---|
| Joint return | $50 | $50,000 |
| Head of a household. | $66.67 | $37,500 |
| All other cases | $100 | $25,000. |

''(3) JOINT RETURN.—In the case of a joint return, this subsection shall be applied separately to each individual filing such return, except that for purposes of paragraph (1), the adjusted gross income shall be their combined adjusted gross income of the taxpayer.

''(4) COORDINATION WITH MANNER IN WHICH CREDIT ALLOWED.—The credit under subsection (a) shall be allowed only as provided in section 6430.

''(c) ELIGIBLE INDIVIDUAL.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible individual' means any individual if such individual has attained the age of 18 as of the close of the taxable year.

''(2) DEPENDENTS AND FULL-TIME STUDENTS NOT ELIGIBLE.—The term 'eligible individual' shall not include—

''(A) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins, and

''(B) any individual who is a student (as defined in section 152(f)).

''(d) QUALIFIED RETIREMENT SAVINGS CONTRIBUTIONS.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified retirement savings contributions' means, with respect to any taxable year, the sum of—

''(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual,

''(B) the amount of—

''(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

''(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4974(c)).

''(2) REDUCTION FOR CERTAIN DISTRIBUTIONS.—

''(A) IN GENERAL.—The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

''(B) TESTING PERIOD.—For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes such taxable year and the 3 preceding taxable years.

''(C) EXCEPTED DISTRIBUTIONS.—There shall not be taken into account under subparagraph (A)—

''(i) any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

''(ii) any distribution to which section 408A(d)(3) applies.

''(D) TREATMENT OF DISTRIBUTIONS RECEIVED BY SPOUSE OF INDIVIDUAL.—For purposes of determining distributions received by an individual under subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual if such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

''(3) ADDITIONAL TAX ON EARLY NET WITHDRAWALS.—

''(A) IN GENERAL.—If with respect to a taxable year there is a disqualified net withdrawal, the amount of tax imposed by this chapter for such taxable year shall be increased by the amount determined under subparagraph (B).

''(B) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph is the aggregate decrease in credits allowed under this section for any of the preceding 10 taxable years if the disqualified net withdrawals were applied against (and operated to reduce) the qualified retirement savings contributions taken into account under subsection (a). Such reduction shall be applied in order beginning with the first taxable year in such 10-year period and shall take into account any prior application of this paragraph.

''(C) DISQUALIFIED NET WITHDRAWALS.—The term 'disqualified net withdrawals' means the aggregate distributions subject to tax under section 72(t) for the taxable year over the qualified retirement savings contributions for the taxable year.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) ADJUSTED GROSS INCOME.—Adjusted gross income shall be determined without regard to sections 911, 931, and 933.

''(2) INVESTMENT IN THE CONTRACT.—Any credit under this section shall be disregarded in determining investment in the contract.

''(f) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2010.''.

(b) REPEAL OF SAVERS CREDIT.—Subpart A of part IV of subchapter A of chapter 1 of such Code is amended by striking section 25B (relating to elective deferrals and IRA contributions by certain individuals).

(c) CONFORMING AMENDMENTS.—

(1) Section 26(b)(2) of such Code is amended by striking ''and'' at the end of subparagraph (R), by striking the period at the end of subparagraph (S) and inserting '', and'', and by inserting after subparagraph (S) the following new subparagraph:

''(T) section 36(d)(3) (relating to additional tax where net withdrawals exceed credit).''.

(2) Section 24(b)(3)(B) of such Code is amended by striking ''sections 23 and 25B'' and inserting ''section 23''.

(3) Section 25(e)(1)(C) of such Code is amended by striking ''25B,''.

(4) Section 26(a)(1) of such Code is amended by striking ''sections 23, 24, and 25B'' and inserting ''sections 23 and 24''.

(5) Subchapter C of part IV of subchapter A of chapter 1 of such Code is amended—

(A) by redesignating section 36 as section 37, and

(B) by redesignating section 25B, as moved by paragraph (1), as section 36.

(6) Section 904(h) of such Code is amended by striking ''sections 23, 24, and 25B'' and inserting ''sections 23 and 24''.

(7) Section 1400C of such Code is amended by striking ''sections 23, 24, and 25B'' and inserting ''section 23 and 24''.

(8) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 36 and inserting the following:

''Sec. 36. AmeriSave matching credit.
''Sec. 37. Overpayments of tax.''.

(9) The table of sections for subpart A of part IV of such Code is amended by striking the item relating to section 25B.

(10) Section 1324(b)(2) of title 31, United States Code, is amended by inserting '', or from section 36 of such Code'' before the period at the end.

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

**SEC. 602. MANNER IN WHICH AMERISAVE MATCHING CREDIT ALLOWED.**

(a) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 (relating to rules of special application) is amended by adding at the end the following new section:

**''SEC. 6430. MANNER IN WHICH AMERISAVE MATCHING CREDIT ALLOWED.**

''(a) GENERAL RULE.—The credit allowed under section 36 shall be allowed only as provided in this section.

''(b) AMOUNT PAID DIRECTLY TO RETIREMENT PLAN.—The credit allowed under section 36 for a taxable year shall be paid directly by the Secretary to a plan to which qualified retirement savings contributions (as defined by section 36(d)) may be made, as specified by the taxpayer on the return for such taxable year.

''(c) TREATMENT OF AMOUNTS RECEIVED BY PLANS.—

''(1) CERTAIN RULES DISREGARDED.—Amounts paid under this section to a retirement plan shall be disregarded for all purposes in determining whether the plan meets the applicable requirements of subtitle A.

''(2) ACCEPTANCE BY PLANS.—A plan to which payments may be made under this section shall not fail to be treated as qualified merely on account of the receipt of such payments.

''(d) AMOUNT NOT TREATED AS CREDIT OR REFUND.—Except as provided by subsection (b), the credit allowed under section 36 shall not be used as a credit under subtitle A or refunded as part of a return under subtitle A.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of such Code is amended by adding at the end the following new item:

''Sec. 6430. Manner in which AmeriSave matching credit allowed.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

**SEC. 603. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.**

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

''(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

''(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term 'qualified automatic contribution arrangement' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (F).

''(C) AUTOMATIC DEFERRAL.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

''(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

''(I) to not have such contributions made, or

''(II) to make elective contributions at a level specified in such affirmative election.

''(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term 'qualified percentage' means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

''(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

''(II) 4 percent during the first plan year following the plan year described in subclause (I),

''(III) 5 percent during the second plan year following the plan year described in subclause (I), and

''(IV) 6 percent during any subsequent plan year.

''(iv) AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.—Clause (i) shall be applied without taking into account any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause).

''(D) PARTICIPATION.—

''(i) IN GENERAL.—An arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of the employees eligible to participate in the arrangement other than—

''(I) highly compensated employees, and

''(II) at the election of the plan administrator, employees described in subparagraph (C)(iv).

''(ii) FIRST PLAN YEAR.—An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year with respect to which such arrangement is a qualified automatic contribution arrangement (determined without regard to this subparagraph).

''(E) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

''(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 6 percent of compensation, or

''(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

''(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

''(iii) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

''(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

''(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

''(iv) APPLICATION OF CERTAIN OTHER RULES.—The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

''(F) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

''(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

''(ii) TIMING AND CONTENT REQUIREMENTS.—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

''(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

''(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

''(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.''.

(2) MATCHING CONTRIBUTIONS.—Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

''(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

''(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

''(B) meets the requirements of paragraph (11)(B).''.

(3) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(A) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting ''or 401(k)(13)'' after ''section 401(k)(12)''.

(B) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is

amended by inserting ''or 401(m)(12)'' after ''section 401(m)(11)''.

(4) CORRECTIVE DISTRIBUTIONS.—

(A) IN GENERAL.—Section 414 of such Code (relating to definitions and special rules) is amended by adding at the end the following new subsection:

''(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

''(1) IN GENERAL.—No tax shall be imposed under section 72(t) on a distribution from an applicable employer plan to the employee with respect to whom such contribution relates if such distribution does not exceed the erroneous automatic contribution amount and is made not later than the 1st April 15 following the close of the taxable year in which such contribution was made.

''(2) ERRONEOUS AUTOMATIC CONTRIBUTION AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'erroneous automatic contribution amount' means the lesser of—

''(i) the amount of automatic contributions made during the applicable period which the employee elects in a notice to the plan administrator to treat as an erroneous automatic contribution amount for purposes of this subsection, or

''(ii) $500.

''(B) AUTOMATIC CONTRIBUTION.—The term 'automatic contribution' means contributions which, under the terms of the plan—

''(i) the employee can elect to be made as contributions under the plan on behalf of the employee, or to the employee directly in cash, and

''(ii) which are made on behalf of the employee under the plan pursuant to a plan provision treating the employee as having elected to have the employer make such contributions on behalf of the employee until the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions as a specified level.

''(3) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term 'applicable employer plan'means—

''(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

''(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

''(4) APPLICABLE PERIOD.—For purposes of this subsection, the term 'applicable period' means, with respect to any employee, the three month period that begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to such employee.''.

(B) VESTING CONFORMING AMENDMENTS.—

(i) Section 411(a)(3)(G) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(ii) The heading of section 411(a)(3)(G) of such Code is amended by inserting ''**OR ERRONEOUS AUTOMATIC CONTRIBUTION**'' before the period.

(iii) Section 401(k)(8)(E) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(iv) The heading of section 401(k)(8)(E) of such Code is amended by inserting ''**OR ERRONEOUS AUTOMATIC CONTRIBUTION**'' before the period.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 2005.

**SEC. 604. PREEMPTION OF STATE LAWS PRECLUDING AUTOMATIC ENROLLMENT OR AUTOMATIC ROLLOVERS.**

(a) IN GENERAL.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

''(d) The provisions of this title shall supersede any and all State laws insofar as they may preclude, or have the effect of precluding—

''(1) the establishment or operation of, or making of contributions to, a pension plan under a qualified automatic enrollment arrangement (as defined in section 401(k)(13) of the Internal Revenue Code of 1986), or

''(2) a distribution described in section 401(a)(31)(B) of the Internal Revenue Code of 1986 or the establishment or operation of an individual retirement plan (as defined in section 7701(a)(37) of such Code) allowing receipt of such distributions.''.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to actions (described in paragraph (1) or (2) of section 514(d) of the Employee Retirement Income Security Act of 1974 (added by this subsection)) taken before, on, or after the date of the enactment of this Act.

**SEC. 605. FIDUCIARY STANDARDS RELATING TO AUTOMATIC OR DEFAULT INVESTMENTS.**

(a) IN GENERAL.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e)(1) A fiduciary with respect to an individual account plan shall be deemed to have satisfied the requirements of subsection (a)(1)(B) with respect to the plan, in connection with any qualifying automatic investment under the plan, to the extent those requirements pertain to asset allocation as between equity instruments or investments and debt instruments or investments and to such further extent as may be specified by the Secretary in administrative guidance of general applicability.

''(2) For purposes of this subsection, the term 'qualifying automatic investment' means, in connection with a participant in a plan, an investment of assets constituting some or all of the participant's accrued benefit under the plan in a form of investment specified by the plan, in any case in which—

''(A) such assets—

''(i) are attributable to employer contributions (and earnings thereon) made pursuant to a qualified automatic enrollment arrangement (as defined in section 401(k)(13) of the Internal Revenue Code of 1986),

''(ii) are attributable to distributions described in section 401(a)(31)(B) of such Code, or

''(iii) have been identified by the Secretary as appropriate for automatic investment,

''(B) the plan provides for investment of such assets in such form of investment unless, in lieu thereof, alternative forms of investments, which are also made available to the participant under the terms of the plan, are selected by the participant,

''(C) the plan provides, under such form of investment, for investment of such assets under constraints designed to—

''(i) limit the risk associated with the investment portfolio to a reasonable level of risk while seeking to maximize return consistent with that level of risk, or

''(ii) minimize risk while seeking a reasonable expected return, and

''(D) the expenses associated with the investment meet the standards of paragraph (3).

''(3)(A) The expenses associated with an investment meet the standards of this paragraph if they do not exceed reasonable expenses. Such expenses shall not be treated as exceeding reasonable expenses solely because the expenses in any year (excluding expenses for acquisition of the investment) exceed the investment returns for that year and cause a reduction in principal.

''(B) For purposes of subparagraph (A), the term 'expense' means any fee, charge, commission, load, or other cost or expense associated with the investment (including cost of acquisition, establishment, maintenance, surrender, or termination of the investment and any other cost of managing or administering the investment) to the extent borne by participants.

''(C) The expenses associated with an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) shall not be treated as meeting the standards of this paragraph if such expenses exceed the expenses normally charged by the trustee or custodian of a comparable individual retirement plan established to receive rollover contributions (as defined in section 408(d)(3) of such Code) which are not distributions described in section 401(a)(31)(B) of such Code.

''(4) The requirements of paragraph (2)(C) shall be treated as satisfied with respect to investments provided for by a plan to the extent such investments consist of—

''(A) a balanced portfolio comprised of both equity investments and either stable value or fixed income investments provided by a financial institution (or similar financial entity) that is regulated by the United States or a State in any case in which—

''(i) the equity investments are broad-based index funds or, to the extent permitted by the Secretary under regulations, guidelines, or other administrative guidance, actively managed funds that are broadly diversified so as to minimize the risk of large losses, and

''(ii) the stable value or fixed income investments—

''(I) are designed to comprise at least 20 percent of the total (measured in terms of fair market value), and

''(II) are either diversified to minimize the risk of large losses or are obligations (which may include inflation-protected obligations) issued by the United States, or

''(B) stable value investments.

For purposes of this paragraph, the term 'stable value investments' means investments provided by a financial institution regulated by the United States or a State that are designed to preserve principal and provide a reasonable rate of return, whether or not guaranteed, which may include investments designed to maintain a stable dollar value equal to the original value of the investment. The Secretary may prescribe regulations or other administrative guidance prescribing the manner in which the requirements of paragraph (A)(i) may be applied taking into account classes of investment determined on the basis of investment in large, intermediate, or small capitalization funds, funds of varying styles (such as growth funds or value funds), or funds consisting of, or not consisting of, foreign or international securities.

''(5) An investment otherwise described in the preceding provisions of this subsection shall not be treated as failing to be a qualifying automatic investment solely by reason of:

''(A) the availability to the participant under the terms of the plan of alternative forms of investment which meet the requirements of subsection (c)(1) or are managed by an independent investment manager;

''(B) the extent to which provisions of the plan are or are not directed toward limiting the risk of loss of principal under such investment or promoting long-term capital appreciation;

''(C) any change or variation in the percentages of equity and stable value investments included in the investment portfolio

or other aspects of the constituent investments to the extent such change or variation is based on:

''(i) automatic rebalancing or variable investment returns prior to periodic rebalancing,

''(ii) the participant's age, or

''(iii) other factors relating to the participant's situation, such as years until retirement, other retirement plan coverage, financial situation, or investment preferences expressed to the plan by the participant; or

''(D) the extent to which such investment consists of interests in real estate or real-estate-based investments, if such interests are broadly diversified and do not comprise more than 10 percent of the equity portion of the total investment of plan assets.

''(6)(A) Notwithstanding paragraph (1), the requirements of subsection (a)(1)(C) shall not be treated as satisfied in connection with any qualifying automatic investment unless such investment (other than the stable value portion thereof) is designed so that no more than 0.5 percent of the total fair market value of the assets invested are invested in securities issued by, or interests in the property of, any single person.

''(B) For purposes of subparagraph (A), any person and all affiliates thereof shall be treated as a single person. A corporation is an affiliate of a person if such corporation is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1986, except that 'applicable percentage' shall be substituted for '80 percent' wherever the latter percentage appears in such section) of which person is a member. For purposes of the preceding sentence, the term 'applicable percentage' means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of any other person to the extent provided in regulations of the Secretary. Regulations under this subparagraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

''(7) The Secretary shall issue regulations or other administrative guidance specifying the manner in which investments under independent professional investment management pursuant to sections 402(c)(3) and 403(a)(2) and other qualifying automatic investments may serve as the default investment arrangement with respect to some or all plan assets without adversely affecting plan compliance with this part, as governed by subsection (c)(1) with respect to assets over which participants or beneficiaries exercise control.

''(8)(A) The Secretary may issue regulations or other administrative guidance for compliance with the requirements of this subsection which are consistent with the provisions of this subsection. Compliance with such regulations or guidance shall be deemed to be compliance with the requirements of this subsection. Such regulations or guidance may express compliance in terms of percentages of assets under management, flat dollar amounts, or other factors.

''(B) The regulations issued pursuant to subparagraph (A) may include procedures for granting conditional or unconditional exemptions of investments, classes of investments, investment managers, or classes of investment managers from all or part of the requirements of this subsection. Such procedures shall be similar to the procedures applicable under section 408(a) and subject to the same standards and limitations as apply under section 408(a). Such exemptions may include, in the case of qualifying automatic investments, relief from, or simplified methods of compliance with, the requirements of subparagraphs (B) and (C) of subsection (a)(1) and the provisions of subsection (c).''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to investments made on or after January 1, 2005 (irrespective of the extent to which the Secretary of Labor has issued regulations, guidelines, or other administrative guidance pursuant to section 404(e) of the Employee Retirement Income Security Act of 1974 (added by this subsection)).

**SEC. 606. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

''(i) IN GENERAL.—Any qualified reservist distribution.

''(ii) AMOUNT DISTRIBUTED MAY BE REPAID.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

''(iii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified reservist distribution' means any distribution to an individual if—

''(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

''(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

''(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of such Code is amended by striking ''or'' at the end of subclause (III), by striking ''and'' at the end of subclause (IV) and inserting ''or'', and by inserting after subclause (IV) the following new subclause:

''(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and''.

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

(3) Section 403(b)(11) of such Code is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) for distributions to which section 72(t)(2)(G) applies.''.

(c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

**SEC. 607. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.**

(a) IN GENERAL.—Section 72(t)(2) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions), as amended by section 904, is amended by adding at the end the following new subsection:

''(H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

''(i) IN GENERAL.—Distributions to an individual who is a qualified public safety employee from a governmental plan within the meaning of section 414(d) to the extent such distributions are attributable to a DROP benefit.

''(ii) DEFINITIONS.—For purposes of this subparagraph—

''(I) DROP BENEFIT.—The term 'DROP benefit' means a feature of a governmental plan which is a defined benefit plan and under which an employee elects to receive credits to an account (including a notional account) in the plan which are not in excess of the plan benefits (payable in the form of an annuity) that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee's accrued pension benefit based on years of service after the effective date of the DROP election.

''(II) QUALIFIED PUBLIC SAFETY EMPLOYEE.—The term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision and if the employee was eligible to retire on or before the date of such election and receive immediate retirement benefits.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

**SEC. 608. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING LIMITATION AND DEDUCTIBILITY OF CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) SPECIAL RULE FOR COMPENSATION EARNED BY MEMBERS OF THE ARMED FORCES FOR SERVICE IN A COMBAT ZONE.—For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.''.

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

**SEC. 609. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.

**SEC. 610. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.**

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

''(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

''(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

''(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

''(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

''(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

''(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.''.

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting ''and (11)'' after ''(7)''.

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

**SEC. 611. IRA ELIGIBILITY FOR THE DISABLED.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following:

''(8) SPECIAL RULE FOR CERTAIN DISABLED INDIVIDUALS.—In the case of an individual—

''(A) who is disabled (within the meaning of section 72(m)(7)), and

''(B) who has not attained the applicable age (as defined in section 401(a)(9)(H)) before the close of the taxable year,

subparagraph (B) of subsection (b)(1) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

## TITLE VII—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

**SEC. 701. TREATMENT OF ANNUITY AND LIFE INSURANCE CONTRACTS WITH A LONG-TERM CARE INSURANCE FEATURE.**

(a) EXCLUSION FROM GROSS INCOME.—Subsection (e) of section 72 of the Internal Revenue Code of 1986 (relating to amounts not received as annuities) is amended by redesignating paragraph (11) as paragraph (12) and by inserting after paragraph (10) the following new paragraph:

''(11) SPECIAL RULES FOR CERTAIN COMBINATION CONTRACTS PROVIDING LONG-TERM CARE INSURANCE.—Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

''(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

''(B) such charge shall not be includible in gross income.''.

(b) TAX-FREE EXCHANGES AMONG CERTAIN INSURANCE POLICIES.—

(1) ANNUITY CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (2) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(2) LIFE INSURANCE CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (3) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(3) EXPANSION OF TAX-FREE EXCHANGES OF LIFE INSURANCE, ENDOWMENT, AND ANNUITY CONTRACTS FOR LONG-TERM CARE CONTRACTS.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended—

(A) in paragraph (1) by striking ''contract;'' and inserting ''contract or for a qualified long-term care insurance contract;'',

(B) in paragraph (2) by striking ''contract;'' and inserting ''contract, or (C) for a qualified long-term care insurance contract;'', and

(C) in paragraph (3) by striking ''contract.'' and inserting ''contract or for a qualified long-term care insurance contract.''.

(4) TAX-FREE EXCHANGES OF QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended by striking ''or'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; or'', and by inserting after paragraph (3) the following new paragraph:

''(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.''.

(c) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Subsection (e) of section 7702B of such Code (relating to treatment of qualified long-term care insurance) is amended to read as follows:

''(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

''(1) COVERAGE TREATED AS CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract, this title shall apply as if the portion of the contract providing such coverage is a separate contract.

''(2) DENIAL OF DEDUCTION UNDER SECTION 213.—No deduction shall be allowed under section 213(a) for any payment made for coverage under a qualified long-term care insurance contract if such payment is made as a charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract.

''(3) APPLICATION OF SECTION 7702.—Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to the life insurance contract, as of any date—

''(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for coverage under the qualified long-term care insurance contract made to that date under the life insurance contract, less

''(B) any such charges the imposition of which reduces the premiums paid for the life insurance contract (within the meaning of section 7702(f)(1)).

''(4) PORTION DEFINED.—For purposes of this subsection, the term 'portion' means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

''(5) ANNUITY CONTRACTS TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of this subsection, none of the following shall be treated as an annuity contract:

''(A) A trust described in section 401(a) which is exempt from tax under section 501(a).

''(B) A contract—

''(i) purchased by a trust described in subparagraph (A),

''(ii) purchased as part of a plan described in section 403(a),

''(iii) described in section 403(b),

''(iv) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

''(v) from an individual retirement account or an individual retirement annuity.

''(C) A contract purchased by an employer for the benefit of the employee (or the employee's spouse).

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this paragraph, be treated as paid under a separate contract to which subparagraph (B)(i) applies.''.

(d) INFORMATION REPORTING.—

(1) Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

**''SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS UNDER COMBINED ARRANGEMENTS.**

''(a) REQUIREMENT OF REPORTING.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(e)(11) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

''(1) the amount of the aggregate of such charges against each such contract for the calendar year,

''(2) the amount of the reduction in the investment in each such contract by reason of such charges, and

''(3) the name, address, and TIN of the individual who is the holder of each such contract.

''(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person making the payments, and

''(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.''.

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of such chapter 61 of such Code is amended by adding at the end the following new item:

''Sec. 6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements.''.

(e) TREATMENT OF POLICY ACQUISITION EXPENSES.—Subsection (e) of section 848 of such Code (relating to classification of contracts) is amended by adding at the end the following new paragraph:

''(6) TREATMENT OF CERTAIN QUALIFIED LONG-TERM CARE INSURANCE CONTRACT ARRANGEMENTS.—An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).''.

(f) TREATMENT AS QUALIFIED ADDITIONAL BENEFIT.—Subparagraph (A) of section 7702(f)(5) of such Code (relating to qualified additional benefits) is amended by striking ''or'' at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

''(v) qualified long-term care insurance contract which is a part of or a rider on the contract, or''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to exchanges occurring after December 31, 2006.

**SEC. 702. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.**

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

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

**SEC. 703. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.**

(a) IN GENERAL.—Section 402 of the Internal Revenue Code of 1986 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new subsection:

''(l) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—

''(1) IN GENERAL.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.

''(2) LIMITATION.—The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $5,000.

''(3) DISTRIBUTIONS MUST OTHERWISE BE INCLUDIBLE.—

''(A) IN GENERAL.—An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

''(B) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) ELIGIBLE RETIREMENT PLAN.—For purposes of paragraph (1), the term 'eligible retirement plan' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

''(B) ELIGIBLE RETIRED PUBLIC SAFETY OFFICER.—The term 'eligible retired public safety officer' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

''(C) PUBLIC SAFETY OFFICER.—The term 'public safety officer' shall have the same meaning given such term by section 1204(8)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(8)(A)).

''(D) QUALIFIED HEALTH INSURANCE PREMIUMS.—The term 'qualified health insurance premiums' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

''(5) SPECIAL RULES.—For purposes of this subsection—

''(A) DIRECT PAYMENT TO INSURER REQUIRED.—Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

''(B) RELATED PLANS TREATED AS 1.—All eligible retirement plans of an employer shall be treated as a single plan.

''(6) ELECTION DESCRIBED.—

''(A) IN GENERAL.—For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

''(B) SPECIAL RULE.—A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

''(7) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

''(8) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(a) of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(2) Section 403(b) of such Code (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(3) Section 457(a) of such Code (relating to year of inclusion in gross income) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.''.

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

**TITLE VIII—REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000**

**SEC. 801. REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000.**

(a) GENERAL RULE.—Section 1 of the Internal Revenue Code of 1986 (relating to imposition of tax on individuals) is amended by adding at the end the following new subsection:

''(j) REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000.—

''(1) IN GENERAL.—If the adjusted gross income of a taxpayer exceeds the threshold amount, the tax imposed by this section (determined without regard to this subsection) shall be increased by an amount equal to 1.8 percent of so much of the adjusted gross income as exceeds the threshold amount.

''(2) THRESHOLD AMOUNTS.—For purposes of this subsection, the term 'threshold amount' means—

''(A) $1,000,000 in the case of a joint return, and

''(B) $500,000 in the case of any other return.

''(3) TAX NOT TO APPLY TO ESTATES AND TRUSTS.—This subsection shall not apply to an estate or trust.

''(4) SPECIAL RULE.—For purposes of section 55, the amount of the regular tax shall be determined without regard to this subsection.

''(5) TERMINATION.—This subsection shall not apply to taxable years beginning after December 31, 2010.''.

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

(c) SECTION 15 NOT TO APPLY.—The amendment made by subsection (a) shall not be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

Mr. GEORGE MILLER of California (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The gentleman from California is recognized for 5 minutes.

Mr. GEORGE MILLER of California. Mr. Speaker, we offer this motion to recommit to address a number of issues that are not addressed in the legislation before us and to hopefully not do some of the things that the legislation before us does. We believe that we can do these things without driving employers out of the defined benefit system.

The current bill before us provides a compilation of interest rates and premium fees and costs that we believe will drive employers to accelerate the termination and freezing of these plans. That is not because we say it; that is what the employers have told one another in their associations, the expectation that some 60 percent of the employers will freeze or terminate their plans.

We believe that our motion to recommit does not impose arbitrary benefit cuts and freezes on workers who do not control whether or not the employers fund the pension plans or not.

The motion to recommit would require companies to seek alternatives to the termination and prove that a plan is in fact unaffordable before they can cast it away in bankruptcy, as we saw United Airlines do, that cost the employees billions of dollars in pension benefits.

Importantly, the motion to recommit would actually help the employees of American, Continental, Delta and Northwest Airlines, whose pension plans are in danger of being terminated. The bill before us does not do that. It talks about doing that in the future.

The motion to recommit would also protect 9 million workers who are covered by multi-employer pension plans in the construction, food service and transportation industries. We would ensure that workers and executives would be affected equally in pension plans. Again, the horrible demonstration out of United Airlines, as the executives walked away with $235 million in a new, debt-free company and the employees walked away with wage cuts and benefits cuts and the loss of retirement benefits.

Finally, the motion to recommit would help workers who do not have access to defined benefit plans through the automatic enrollment in 401(k) plans and the expanded savers credit.

This legislation, if it is not corrected, is the greatest assault on the pension benefits and the retirement nest eggs of hardworking, middle class Americans in the history of this Congress. I say that because it is quite clear that this will expedite and will accelerate the freezing and the termination of these plans that so many millions of Americans are relying on.

One thing this legislation will do, if you want to continue to debate Social Security, you will now prove with the passage of this legislation that Social Security is the most secure retirement system in this country, that it is the only one that people can count on, because these other plans are in jeopardy.

Mr. Speaker, I yield to my colleague, Mr. CARDIN from Maryland.

Mr. CARDIN. Let me thank Mr. MILLER for offering this substitute. I am pleased to join him.

I listened to a lot of my colleagues talk in favor of this bill, telling me things they do not particularly like about it, things that will be, they hope, corrected in conference, and now we have a motion to recommit that does exactly that.

So if we are sincere in wanting to move the process forward so that we can get to conference, let us speak to what we want to get from the conference report. Let me make it clear that the rule did not permit us to offer this directly as a substitute, so the only way we can do it is by the motion to recommit.

But it does contain the issues that many have talked about. It has the good without the bad. It has the provisions for the defined contributions, so that we can deal with the 401(k)s and the IRAs and the savers credits and automatic enrollments and those provisions that are important. But it also deals with the issue of the airline industry directly, not on a promise that we will deal with it in conference, and it deals with the revolving door of bankruptcy, which, if we do not correct, we are going to have other problems in addition to the airline industry. So it deals with those problems.

But it does one more thing, Mr. Speaker, that is critically important: It takes away the additional deficit that this bill would create. This bill will add an additional $14 billion to the deficit of this country. The substitute pays for the cost of the legislation so that we do not add to the growing problem of the deficit of this Nation.

□ 1515

This is a responsible motion, and I urge my colleagues to support it.

Mr. BOEHNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. LATHAM). The gentleman is recognized for 5 minutes.

Mr. BOEHNER. Mr. Speaker, the debate today on the floor is about the massive underfunding in worker pensions and the need to change the status quo. Unfortunately, what we have just been presented is what would actually make pensions less secure by preserving the status quo and putting at risk millions of American pensions.

Let me make five points. First, the motion to recommit preserves the status quo by requiring employers and union leaders to fund their plans at 90 percent or in some cases only 80 percent, instead of the 100 percent funding requirements that we have in the underlying bill. It just does not pass the straight-face test.

Second, they are preserving the status quo by continuing to allow employers to take up to 30 years to erase any funding shortfall in their plan. Pension experts agree that this increases the risk of plan termination, threatening the benefits of workers and retirees.

Third, they are preserving the status quo on unrestricted use of credit balances which mask the massive pension

plan underfunding we see today. We know that the credit balance rules that are in place today are irresponsible public policy. They must be changed if we are going to strengthen the pension system. And to allow those rules to stay in place, again, does not pass the straight-face test.

Fourth, they propose preserving the status quo by failing to incorporate the full package of multi-employer reforms that were agreed to by a broad coalition of organized labor and employer groups.

Last, they preserve the status quo by promoting uncertainty among employers if these pension benefits and workers who are relying on them maintain the current interest rate package for 2 years and then go back to the 30-year rate thereafter.

The modified yield curve in the underlying bill presents a more accurate picture of the liabilities that these plans have and should, in fact, stay in the bill.

Mr. Speaker, I believe that the underlying bill is far more balanced. It really does strengthen American pensions, and I would urge my colleagues to reject this.

I yield to the gentleman from Michigan.

Mr. CAMP of Michigan. Mr. Speaker, I thank the distinguished chairman for yielding.

I oppose the motion to recommit. This motion to recommit leaves current pension funding rules in place which ends up weakening the funding rules in the underlying bill. This means that businesses would not be fulfilling their promises to working people.

The motion to recommit also has a $53 billion surtax contained in it on small business. That surtax is bad for workers, bad for small business, bad for America. So I would urge a ''no'' vote on the motion to recommit, a ''yes'' vote on the underlying bill, which would ensure that pension plans would be appropriately funded, but not so strict as to cause employers to terminate their pension plans. I urge a ''yes'' vote on the underlying bill.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GEORGE MILLER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on the question of passage, if ordered; adoption of H. Res. 610; and motions to suspend the rules with respect to H. Res. 579 and H. Con. Res. 315.

The vote was taken by electronic device, and there were—yeas 200, nays 227, not voting 6, as follows:

[Roll No. 634]

YEAS—200

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—227

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Davis (FL)
Diaz-Balart, M.
Hyde
Pearce
Pickering
Waters

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1542

Mr. BARRETT of South Carolina and Mr. SOUDER changed their vote from ''yea'' to ''nay.''

Messrs. McDERMOTT, REYES and FARR changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BOEHNER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 294, noes 132, not voting 7, as follows:

[Roll No. 635]

AYES—294

Aderholt
Akin
Alexander
Andrews
Baca
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boustany
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capuano
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costello
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Dingell
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
Engel
English (PA)
Everett
Fattah
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Gene
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hooley
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Lungren, Daniel E.
Lynch
Mack
Manzullo
Marchant
Marshall
Matheson
McCarthy
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
McNulty
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moore (KS)
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Osborne
Otter
Owens
Oxley
Pascrell
Pastor
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Ryan (OH)
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Souder
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOES—132

Abercrombie
Ackerman
Allen
Baird
Baldwin
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Boucher
Boyd
Brown, Corrine
Butterfield
Capps
Cardin
Cardoza
Carnahan
Carson
Clyburn
Costa
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Doggett
Doyle
Emanuel
Eshoo
Etheridge
Evans
Farr
Filner
Frank (MA)
Gonzalez
Green, Al
Grijalva
Hastings (FL)
Higgins
Hinchey
Hinojosa
Holt
Honda
Hostettler
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren, Zoe
Lowey
Maloney
Markey
Matsui
McCollum (MN)
McDermott
McGovern
McKinney
Meehan
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Pallone
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Reyes
Roybal-Allard
Ruppersberger
Rush
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Solis
Spratt
Stark
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Woolsey

NOT VOTING—7

Davis (FL)
Diaz-Balart, L.
Diaz-Balart, M.
Gilchrest
Hyde
Pickering
Waters

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1550

Mr. COSTELLO and Mr. MEEK of Florida changed their vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## PERSONAL EXPLANATION

Mr. PICKERING. Mr. Speaker, on rollcall Nos. 634 and 635, I was unavoidably detained. I would have voted ''nay'' on recommit and ''aye'' on passage.

## MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

## PROVIDING FOR CONSIDERATION OF H.R. 4437, BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

The SPEAKER pro tempore. The pending business is the vote on adoption of House Resolution 610 on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the resolution.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 220, nays 206, not voting 7, as follows:

[Roll No. 636]

YEAS—220

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)