

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 2830**  
**OFFERED BY MR. SAM JOHNSON OF TEXAS**

Strike all after the enacting clause and insert the following:

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

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

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

Sec. 1. Short title and table of contents.

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

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

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

Subtitle B—Amendments to Internal Revenue Code of 1986

[*See introduced bill, page 71, line 1 through page 140, line 13*].

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 [*See introduced bill, page 142, line 3 through page 143, line 16*].

**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

*[See introduced bill, page 200, line 8 through page 251, line 15].*

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 *[See introduced bill, page 254, line 6 through page 255, line 7].*

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 *[See introduced bill, page 287, line 15 through page 298, line 23].*

TITLE VII—DEDUCTION LIMITATIONS

*[See introduced bill, page 299, line 1 through page 305, line 20].*

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

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

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

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12 1086) are repealed.

13 (b) NEW MINIMUM FUNDING STANDARDS.—Part 3  
14 of subtitle B of title I of such Act (as amended by sub-  
15 section (a)) is amended further by inserting after section  
16 301 the following new section:

17 “MINIMUM FUNDING STANDARDS

18 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM  
19 FUNDING STANDARD.—

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

23 “(2) MINIMUM FUNDING STANDARD.—For pur-  
24 poses of paragraph (1), a plan shall be treated as

1       satisfying the minimum funding standard for a plan  
2       year if—

3               “(A) in the case of a defined benefit plan  
4               which is a single-employer plan, the employer  
5               makes contributions to or under the plan for  
6               the plan year which, in the aggregate, are not  
7               less than the minimum required contribution  
8               determined under section 303 for the plan for  
9               the plan year,

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

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

22       “(b) LIABILITY FOR CONTRIBUTIONS.—

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

1 under paragraphs (3) and (4) of section 303(i)  
2 shall be paid by the employer responsible for making  
3 contributions to or under the plan.

4 “(2) JOINT AND SEVERAL LIABILITY WHERE  
5 EMPLOYER MEMBER OF CONTROLLED GROUP.—In  
6 the case of a single-employer plan, if the employer  
7 referred to in paragraph (1) is a member of a con-  
8 trolled group, each member of such group shall be  
9 jointly and severally liable for payment of such con-  
10 tributions.

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

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

15 “(A) IN GENERAL.—If—

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

1                   “(ii) application of the standard would  
2                   be adverse to the interests of plan partici-  
3                   pants in the aggregate,  
4                   the Secretary of the Treasury may, subject to  
5                   subparagraph (C), waive the requirements of  
6                   subsection (a) for such year with respect to all  
7                   or any portion of the minimum funding stand-  
8                   ard. The Secretary of the Treasury shall not  
9                   waive the minimum funding standard with re-  
10                  spect to a plan for more than 3 of any 15 (5  
11                  of any 15 in the case of a multiemployer plan)  
12                  consecutive plan years.

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

16                         “(i) in the case of a single-employer  
17                         plan, the minimum required contribution  
18                         under section 303 for the plan year shall  
19                         be reduced by the amount of the waived  
20                         funding deficiency and such amount shall  
21                         be amortized as required under section  
22                         303(j), and

23                         “(ii) in the case of a multiemployer  
24                         plan, the funding standard account shall  
25                         be credited under section 304(b)(3)(C)

1 with the amount of the waived funding de-  
2 ficiency and such amount shall be amor-  
3 tized as required under section  
4 304(b)(2)(C).

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

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

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

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

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

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

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

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

13                 “(A) SECURITY MAY BE REQUIRED.—

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

22                         “(ii) SPECIAL RULES.—Any security  
23                         provided under clause (i) may be perfected  
24                         and enforced only by the Pension Benefit  
25                         Guaranty Corporation, or at the direction

1 of the Corporation, by a contributing spon-  
2 sor (within the meaning of section  
3 4001(a)(13)), or a member of such spon-  
4 sor's controlled group (within the meaning  
5 of section 4001(a)(14)).

6 “(B) CONSULTATION WITH THE PENSION  
7 BENEFIT GUARANTY CORPORATION.—Except as  
8 provided in subparagraph (C), the Secretary of  
9 the Treasury shall, before granting or modi-  
10 fying a waiver under this subsection with re-  
11 spect to a plan described in subparagraph  
12 (A)(i)—

13 “(i) provide the Pension Benefit  
14 Guaranty Corporation with—

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

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

21 “(ii) consider—

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

24 “(II) any views of any employee  
25 organization (within the meaning of

1 section 3(4)) representing participants  
2 in the plan which are submitted in  
3 writing to the Secretary of the Treas-  
4 ury in connection with such applica-  
5 tion.

6 Information provided to the Corporation under  
7 this subparagraph shall be considered tax re-  
8 turn information and subject to the safe-  
9 guarding and reporting requirements of section  
10 6103(p) of the Internal Revenue Code of 1986.

11 “(C) EXCEPTION FOR CERTAIN WAIV-  
12 ERS.—

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

17 “(I) the aggregate unpaid min-  
18 imum required contribution for the  
19 plan year and all preceding plan  
20 years, and

21 “(II) the present value of all  
22 waiver amortization installments de-  
23 termined for the plan year and suc-  
24 ceeding plan years under section  
25 303(j)(2),

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

2 “(ii) TREATMENT OF WAIVERS FOR  
3 WHICH APPLICATIONS ARE PENDING.—The  
4 amount described in clause (i)(I) shall in-  
5 clude any increase in such amount which  
6 would result if all applications for waivers  
7 of the minimum funding standard under  
8 this subsection which are pending with re-  
9 spect to such plan were denied.

10 “(iii) UNPAID MINIMUM REQUIRED  
11 CONTRIBUTION.—For purposes of this  
12 subparagraph—

13 “(I) IN GENERAL.—The term  
14 ‘unpaid minimum required contribu-  
15 tion’ means, with respect to any plan  
16 year, any minimum required contribu-  
17 tion under section 303 for the plan  
18 year which is not paid on or before  
19 the due date (as determined under  
20 section 303(i)(1)) for the plan year.

21 “(II) ORDERING RULE.—For  
22 purposes of subclause (I), any pay-  
23 ment to or under a plan for any plan  
24 year shall be allocated first to unpaid  
25 minimum required contributions for

1 all preceding plan years on a first-in,  
2 first-out basis and then to the min-  
3 imum required contribution under sec-  
4 tion 303 for the plan year.

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

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

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

23 “(i) with respect to such employer,  
24 and

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

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

12                  “(6) ADVANCE NOTICE.—

13                         “(A) IN GENERAL.—The Secretary of the  
14                         Treasury shall, before granting a waiver under  
15                         this subsection, require each applicant to pro-  
16                         vide evidence satisfactory to such Secretary that  
17                         the applicant has provided notice of the filing of  
18                         the application for such waiver to each affected  
19                         party (as defined in section 4001(a)(21)). Such  
20                         notice shall include a description of the extent  
21                         to which the plan is funded for benefits which  
22                         are guaranteed under title IV and for benefit li-  
23                         abilities.

24                         “(B) CONSIDERATION OF RELEVANT IN-  
25                         FORMATION.—The Secretary of the Treasury

1 shall consider any relevant information provided  
2 by a person to whom notice was given under  
3 subparagraph (A).

4 “(7) RESTRICTION ON PLAN AMENDMENTS.—

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

20 “(B) EXCEPTION.—Paragraph (1) shall  
21 not apply to any plan amendment which—

22 “(i) the Secretary of the Treasury de-  
23 termines to be reasonable and which pro-  
24 vides for only de minimis increases in the  
25 liabilities of the plan,

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

3                   “(iii) is required as a condition of  
4                   qualification under part I of subchapter D,  
5                   of chapter 1 of the Internal Revenue Code  
6                   of 1986.

7                   “(8) CROSS REFERENCE.—For corresponding  
8                   duties of the Secretary of the Treasury with regard  
9                   to implementation of the Internal Revenue Code of  
10                  1986, see section 412(e) of such Code.

11                  “(d) MISCELLANEOUS RULES.—

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

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

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

24                  “(B) does not reduce the accrued benefit  
25                  of any participant determined as of the begin-

1           ning of the first plan year to which the amend-  
2           ment applies, and

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

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



1 plan year of a defined benefit plan which is a single  
2 employer plan—

3 “(A) in any case in which the value of  
4 plans assets of the plan (reduced by the pre-  
5 funding balance and the funding standard car-  
6 ryover balance) is less than the funding target  
7 of the plan for the plan year, the sum of—

8 “(i) the target normal cost of the plan  
9 for the plan year,

10 “(ii) in any case in which the value of  
11 plan assets of the plan (reduced by the  
12 pre-funding balance in the case of a plan  
13 with respect to which an election is in ef-  
14 fect under paragraph (2)(A)(ii) with re-  
15 spect to any portion of the pre-funding bal-  
16 ance) is less than the funding target of the  
17 plan for the plan year, the shortfall amor-  
18 tization charge for the plan for the plan  
19 year determined under subsection (c), and

20 “(iii) the waiver amortization charge  
21 (if any) for the plan for the plan year as  
22 determined under subsection (j),

23 “(B) in any case in which the value of plan  
24 assets of the plan (reduced by the pre-funding  
25 balance and the funding standard carryover bal-

1           ance) exceeds the funding target of the plan for  
2           the plan year, the target normal cost of the  
3           plan for the plan year reduced by such excess,  
4           or

5                   “(C) in any other case, the target normal  
6           cost of the plan for the plan year.

7           “(2) CREDIT FOR PRE-FUNDING BALANCE AND  
8           FUNDING STANDARD CARRYOVER BALANCE.—

9                   “(A) IN GENERAL.—In the case of any  
10          plan year in which—

11                           “(i) the ratio (expressed as a percent-  
12          age) which—

13                                   “(I) the value of plan assets for  
14          the preceding plan year (reduced by  
15          the pre-funding balance as of the  
16          valuation date of the plan for the cur-  
17          rent plan year), bears to

18   “(II) the funding target of the  
19          plan for the preceding plan year (de-  
20          termined without regard to subsection  
21          (g)(1)),

22          is at least 80 percent, and

23                                   “(ii) the plan sponsor elects (in such  
24          form and manner as shall be prescribed in  
25          regulations of the Secretary of the Treas-

1           ury) to credit against the minimum re-  
2           quired contribution for the current plan  
3           year all or a portion of the funding stand-  
4           ard carryover balance and the pre-funding  
5           balance for the current plan year (not in  
6           excess of such minimum required contribu-  
7           tion),

8           the minimum required contribution for the plan  
9           year shall be reduced by the amount so credited  
10          by the plan sponsor. For purposes of the pre-  
11          ceding sentence, the minimum required con-  
12          tribution shall be determined after taking into  
13          account any waiver under section 302(c).

14               “(B) COORDINATION WITH FUNDING  
15               STANDARD CARRYOVER BALANCE.—To the ex-  
16               tent that any plan has a funding standard car-  
17               ryover balance greater than zero—

18                       “(i) no amount of the pre-funding bal-  
19                       ance of such plan may be credited under  
20                       this paragraph in reducing the minimum  
21                       required contribution, and

22                       “(ii) no election may be made under  
23                       subsection (h)(1)(C)(ii).

24               “(b) TARGET NORMAL COST.—For purposes of this  
25               section, subject to subsection (g)(2), the term ‘target nor-

1 mal cost' means, for any plan year, the present value of  
2 all benefits which are expected to accrue or to be earned  
3 under the plan during the plan year. For purposes of this  
4 subsection, if any benefit attributable to services per-  
5 formed in a preceding plan year is increased by reason  
6 of any increase in compensation during the current plan  
7 year, the increase shall be treated as having accrued dur-  
8 ing the current plan year.

9 “(c) SHORTFALL AMORTIZATION CHARGE.—

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

16 “(2) SHORTFALL AMORTIZATION INSTALL-  
17 MENT.—The plan sponsor shall determine, with re-  
18 spect to the shortfall amortization base of the plan  
19 for any plan year, the amounts necessary to amor-  
20 tize such shortfall amortization base, in level annual  
21 installments over a period of 7 plan years beginning  
22 with such plan year. For purposes of paragraph (1),  
23 the annual installment of such amortization for each  
24 plan year in such 7-plan-year period is the shortfall  
25 amortization installment for such plan year with re-

1       spect to such shortfall amortization base. In deter-  
2       mining any shortfall amortization installment under  
3       this paragraph, the plan sponsor shall use the seg-  
4       ment rates determined under subsection (f)(2) ap-  
5       plied under rules similar to the rules of subsection  
6       (f)(2)(B).

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

11               “(A) the funding shortfall of such plan for  
12      such plan year, over

13               “(B) the sum of—

14               “(i) the present value (determined  
15      using the segment rates determined under  
16      subsection (f)(2) applied under rules simi-  
17      lar to the rules of subsection (f)(2)(B)) of  
18      the aggregate total of the shortfall amorti-  
19      zation installments, for such plan year and  
20      the 5 succeeding plan years, which have  
21      been determined with respect to the short-  
22      fall amortization bases of the plan for each  
23      of the 6 plan years preceding such plan  
24      year, and

1                   “(ii) the present value (as so deter-  
2                   mined) of the aggregate total of the waiver  
3                   amortization installments for such plan  
4                   year and the 5 succeeding plan years,  
5                   which have been determined with respect  
6                   to the waiver amortization bases of the  
7                   plan for each of the 5 plan years preceding  
8                   such plan year.

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

12                   “(A) the funding target of the plan for the  
13                  plan year, over

14                   “(B) the value of plan assets of the plan  
15                  for the plan year (reduced by the pre-funding  
16                  balance and the funding standard carryover bal-  
17                  ance) which are held by the plan on the valu-  
18                  ation date.

19                  “(5) EARLY DEEMED AMORTIZATION UPON AT-  
20                  TAINMENT OF FUNDING TARGET.—In any case in  
21                  which the funding shortfall of a plan for a plan year  
22                  is zero, for purposes of determining the shortfall am-  
23                  ortization charge for such plan year and succeeding  
24                  plan years, the shortfall amortization base for all  
25                  preceding plan years shall be reduced to zero.

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

3           “(1) FUNDING TARGET.—Except as provided in  
4 subsection (g)(1), the funding target of a plan for a  
5 plan year is the present value of all liabilities to par-  
6 ticipants and their beneficiaries under the plan for  
7 the plan year.

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

12           “(A) the value of plan assets for the plan  
13 year (reduced by the pre-funding balance and  
14 the funding standard carryover balance), bears  
15 to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3           “(A) CONTRIBUTIONS FOR PRIOR PLAN  
4 YEARS TAKEN INTO ACCOUNT.—For purposes  
5 of determining the value of plan assets for any  
6 current plan year, in any case in which a con-  
7 tribution properly allocable to amounts owed for  
8 a preceding plan year is made on or after the  
9 valuation date of the plan for such current plan  
10 year, such contribution shall be taken into ac-  
11 count, except that any such contribution made  
12 during any such current plan year beginning  
13 after 2006 shall be taken into account only in  
14 an amount equal to its present value (deter-  
15 mined using the effective rate of interest for the  
16 plan for the preceding plan year) as of the valu-  
17 ation date of the plan for such current plan  
18 year.

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

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

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

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

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

24 “(f) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

11           “(2) INTEREST RATES.—

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

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

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

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

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

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

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

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

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

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

1                   “(D) CORPORATE BOND YIELD CURVE.—

2                   For purposes of this paragraph—

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

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

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

1 made under this subparagraph shall apply to  
2 the plan year for which the election is made and  
3 all succeeding plan years, unless the election is  
4 revoked with the consent of the Secretary of the  
5 Treasury.

6 “(F) PUBLICATION REQUIREMENTS.—The  
7 Secretary of the Treasury shall publish for each  
8 month the corporate bond yield curve (and the  
9 corporate bond yield curve reflecting the modi-  
10 fication described in section  
11 205(g)(3)(B)(iii)(I)) for such month and each  
12 of the rates determined under subparagraph  
13 (B) for such month. The Secretary of the  
14 Treasury shall also publish a description of the  
15 methodology used to determine such yield curve  
16 and such rates which is sufficiently detailed to  
17 enable plans to make reasonable projections re-  
18 garding the yield curve and such rates for fu-  
19 ture months based on the plan’s projection of  
20 future interest rates.

21 “(G) TRANSITION RULE.—

22 “(i) IN GENERAL.—Notwithstanding  
23 the preceding provisions of this paragraph,  
24 for plan years beginning in 2006 or 2007,  
25 the first, second, or third segment rate for

1 a plan with respect to any month shall be  
2 equal to the sum of—

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

7 “(II) the product of the rate de-  
8 termined under the rules of section  
9 302(b)(5)(B)(ii)(II) (as in effect for  
10 plan years beginning in 2005), multi-  
11 plied by a percentage equal to 100  
12 percent minus the applicable percent-  
13 age.

14 “(ii) APPLICABLE PERCENTAGE.—For  
15 purposes of clause (i), the applicable per-  
16 centage is  $33\frac{1}{3}$  percent for plan years be-  
17 ginning in 2006 and  $66\frac{2}{3}$  percent for plan  
18 years beginning in 2007.

19 “(3) MORTALITY TABLE.—

20 “(A) IN GENERAL.—The mortality table  
21 used in determining any present value or mak-  
22 ing any computation under this section shall be  
23 the RP–2000 Combined Mortality Table, using  
24 Scale AA, as published by the Society of Actu-  
25 aries, as in effect on the date of the enactment

1 of the Pension Protection Act of 2005 and as  
2 revised from time to time under subparagraph  
3 (B).

4 “(B) PERIODIC REVISION.—The Secretary  
5 of the Treasury shall (at least every 10 years)  
6 make revisions in any table in effect under this  
7 paragraph to reflect the actual experience of  
8 pension plans and projected trends in such ex-  
9 perience.

10 “(C) TRANSITION RULE.—Under regula-  
11 tions of the Secretary of the Treasury, any dif-  
12 ference in assumptions as set forth in the mor-  
13 tality table specified in subparagraph (A) and  
14 assumptions as set forth in the mortality table  
15 described in section 302(d)(7)(C)(ii) (as in ef-  
16 fect for plan years beginning in 2005) shall be  
17 phased in ratably over the first period of 5 plan  
18 years beginning in or after 2006 so as to be  
19 fully effective for the fifth plan year.

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

1           “(A) the probability that future benefit  
2           payments under the plan will be made in the  
3           form of optional forms of benefits provided  
4           under the plan (including lump sum distribu-  
5           tions, determined on the basis of the plan’s ex-  
6           perience and other related assumptions), and

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

13          “(5) APPROVAL OF LARGE CHANGES IN ACTU-  
14          ARIAL ASSUMPTIONS.—

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

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

23                         “(i) the aggregate unfunded vested  
24                         benefits as of the close of the preceding  
25                         plan year (as determined under section

1           4006(a)(3)(E)(iii)) of such plan and all  
2           other plans maintained by the contributing  
3           sponsors (as defined in section  
4           4001(a)(13)) and members of such spon-  
5           sors' controlled groups (as defined in sec-  
6           tion 4001(a)(14)) which are covered by  
7           title IV (disregarding plans with no un-  
8           funded vested benefits) exceed  
9           \$50,000,000; and

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

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

20           “(1) FUNDING TARGET FOR PLANS IN AT-RISK  
21           STATUS.—

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

1           “(i) the present value of all liabilities  
2           to participants and their beneficiaries  
3           under the plan for the plan year, as deter-  
4           mined by using, in addition to the actu-  
5           arial assumptions described in subsection  
6           (f), the supplemental actuarial assumptions  
7           described in subparagraph (B), plus

8           “(ii) a loading factor determined  
9           under subparagraph (C).

10           “(B) SUPPLEMENTAL ACTUARIAL ASSUMP-  
11           TIONS.—The actuarial assumptions used in de-  
12           termining the valuation of the funding target  
13           shall include, in addition to the actuarial as-  
14           sumptions described in subsection (f), an as-  
15           sumption that all participants will elect benefits  
16           at such times and in such forms as will result  
17           in the highest present value of liabilities under  
18           subparagraph (A)(i).

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

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

1                   “(ii) 4 percent of the funding target  
2                   (determined without regard to this para-  
3                   graph) of the plan for the plan year.

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

8                   “(A) the present value of all benefits which  
9                   are expected to accrue or be earned under the  
10                  plan during the plan year, determined under  
11                  the actuarial assumptions used under para-  
12                  graph (1), plus

13                  “(B) the loading factor under paragraph  
14                  (1)(C), excluding the portion of the loading fac-  
15                  tor described in paragraph (1)(C)(i).

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

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

24                  “(A) IN GENERAL.—In any case in which  
25                  a plan which is in at-risk status for a plan year

1 has been in such status for a consecutive period  
2 of fewer than 5 plan years, the applicable  
3 amount of the funding target and of the target  
4 normal cost shall be, in lieu of the amount de-  
5 termined without regard to this paragraph, the  
6 sum of—

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

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

16 “(B) TRANSITION PERCENTAGE.—For  
17 purposes of this paragraph, the ‘transition per-  
18 centage’ for a plan year is the product derived  
19 by multiplying—

20 “(i) 20 percent, by

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

23 “(h) PRE-FUNDING AND FUNDING STANDARD CAR-  
24 RYOVER BALANCES.—

25 “(1) PRE-FUNDING BALANCE.—

1           “(A) IN GENERAL.—The plan sponsor of a  
2 pension plan which is a single-employer plan  
3 shall maintain a pre-funding balance for pur-  
4 poses of this subsection. Such balance shall con-  
5 sist of a beginning balance of zero, increased  
6 and decreased to the extent provided in sub-  
7 paragraphs (B) and (C), and adjusted further  
8 as provided in paragraph (3).

9           “(B) INCREASES.—As of the valuation  
10 date for each plan year beginning after 2006,  
11 the pre-funding balance of a plan shall be in-  
12 creased by the amount elected by the plan spon-  
13 sor for the plan year. Such amount shall not ex-  
14 ceed the excess (if any) of—

15                   “(i) the aggregate total of employer  
16 contributions to the plan for the preceding  
17 plan year, over

18                   “(ii) the minimum required contribu-  
19 tion for such preceding plan year (in-  
20 creased by interest on any portion of such  
21 minimum required contribution remaining  
22 unpaid as of the valuation date for the cur-  
23 rent plan year, at the effective interest rate  
24 for the plan for the preceding plan year,  
25 for the period beginning with the first day

1 of such preceding plan year and ending on  
2 the date that payment of such portion is  
3 made).

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

8 “(i) the amount credited under sub-  
9 section (a)(2) (if any) in reducing the min-  
10 imum required contribution of the plan for  
11 the preceding plan year, and

12 “(ii) such amount as may be elected  
13 (in such form and manner as shall be pre-  
14 scribed by the Secretary of the Treasury)  
15 by the plan sponsor as a reduction in the  
16 pre-funding balance (prior to being taken  
17 into account for purposes of reductions in  
18 plan assets under this section).

19 “(2) FUNDING STANDARD CARRYOVER BAL-  
20 ANCE.—

21 “(A) IN GENERAL.—The plan sponsor of a  
22 pension plan to which this paragraph applies  
23 shall maintain a funding standard carryover  
24 balance for purposes of this subsection. Such  
25 balance shall consist of a beginning balance de-

1           terminated under subparagraph (C), decreased to  
2           the extent provided in subparagraph (D), and  
3           adjusted further as provided in paragraph (3).

4           “(B) PLANS TO WHICH THIS PARAGRAPH  
5           APPLIES.—This paragraph applies to any sin-  
6           gle-employer plan subject to this part which—

7                   “(i) was in effect for a plan year be-  
8                   ginning in 2005, and

9                   “(ii) had a positive balance in the  
10                  funding standard account under section  
11                  302(b) as in effect for such plan year and  
12                  determined as of the end of such plan year.

13           “(C) BEGINNING BALANCE.—The begin-  
14           ning balance of the funding standard carryover  
15           balance shall be the positive balance described  
16           in subparagraph (B)(ii).

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

21                   “(i) the amount credited under sub-  
22                   section (a)(2) (if any) in reducing the min-  
23                   imum required contribution of the plan for  
24                   the preceding plan year, and

1                   “(ii) such amount as may be elected  
2                   by the plan sponsor (in such form and  
3                   manner as shall be prescribed by the Sec-  
4                   retary of the Treasury) as a reduction in  
5                   the funding standard carryover balance  
6                   (prior to being taken into account for pur-  
7                   poses of reductions in plan assets under  
8                   this section).

9                   “(3) ADJUSTMENTS TO BALANCES.—In deter-  
10                  mining the pre-funding balance or the funding  
11                  standard carryover balance of a plan as of the valu-  
12                  ation date (before applying any increase or decrease  
13                  under paragraph (1) or (2)), the plan sponsor shall,  
14                  in accordance with regulations which shall be pre-  
15                  scribed by the Secretary of the Treasury, adjust  
16                  such balance of the plan so as to reflect the rate of  
17                  net gain or loss (determined, notwithstanding sub-  
18                  section (e)(3), on the basis of fair market value) ex-  
19                  perienced by all plan assets for the period beginning  
20                  with the valuation date for the preceding plan year  
21                  and ending with the date preceding the valuation  
22                  date for the current plan year, properly taking into  
23                  account, in accordance with such regulations, all  
24                  contributions, distributions, and other plan pay-  
25                  ments made during such period.

1           “(4) ELECTIONS.—Except as otherwise pro-  
2           vided in this subsection, any election made under  
3           this subsection shall be made at such time and in  
4           such form and manner as the Secretary of the  
5           Treasury may provide.

6           “(i) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
7           TIONS.—

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

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

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

20                 “(A) INTEREST PENALTY FOR FAILURE TO  
21                 MEET ACCELERATED QUARTERLY PAYMENT  
22                 SCHEDULE.—In any case in which the plan has  
23                 a funding shortfall for the preceding plan year,  
24                 if the required installment is not paid in full,  
25                 then the minimum required contribution for the

1 plan year (as increased under paragraph (2))  
2 shall be further increased by an amount equal  
3 to the interest on the amount of the under-  
4 payment for the period of the underpayment,  
5 using an interest rate equal to the excess of—

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

10 “(ii) the effective rate of interest for  
11 the plan for the plan year.

12 “(B) AMOUNT OF UNDERPAYMENT, PE-  
13 RIOD OF UNDERPAYMENT.—For purposes of  
14 subparagraph (A)—

15 “(i) AMOUNT.—The amount of the  
16 underpayment shall be the excess of—

17 “(I) the required installment,  
18 over

19 “(II) the amount (if any) of the  
20 installment contributed to or under  
21 the plan on or before the due date for  
22 the installment.

23 “(ii) PERIOD OF UNDERPAYMENT.—  
24 The period for which any interest is  
25 charged under this paragraph with respect

1 to any portion of the underpayment shall  
 2 run from the due date for the installment  
 3 to the date on which such portion is con-  
 4 tributed to or under the plan.

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

11 “(C) NUMBER OF REQUIRED INSTALL-  
 12 MENTS; DUE DATES.—For purposes of this  
 13 paragraph—

14 “(i) PAYABLE IN 4 INSTALLMENTS.—  
 15 There shall be 4 required installments for  
 16 each plan year.

17 “(ii) TIME FOR PAYMENT OF IN-  
 18 STALLMENTS.—The due dates for required  
 19 installments are set forth in the following  
 20 table:

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

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

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

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

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

15                   “(II) in the case of a plan year  
16                   beginning after 2006, 100 percent of  
17                   the minimum required contribution  
18                   (without regard to any waiver under  
19                   section 302(c)) to the plan for the  
20                   preceding plan year.

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

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

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

7                   “(ii) SHORT PLAN YEAR.—This sub-  
8                   paragraph shall be applied to plan years of  
9                   less than 12 months in accordance with  
10                  regulations prescribed by the Secretary of  
11                  the Treasury.

12                  “(4) LIQUIDITY REQUIREMENT IN CONNECTION  
13                  WITH QUARTERLY CONTRIBUTIONS.—

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

23                  “(B) PLANS TO WHICH PARAGRAPH AP-  
24                  PLIES.—This paragraph shall apply to a plan  
25                  (other than a plan that would be described in

1 subsection (e)(2)(B) if ‘100’ were substituted  
2 for ‘500’ therein) which—

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

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

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

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

23 “(E) DEFINITIONS.—For purposes of this  
24 subparagraph:

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

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

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

11                   “(ii) BASE AMOUNT.—

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

19                              “(II) SPECIAL RULE.—If the  
20                              amount determined under subclause  
21                              (I) exceeds an amount equal to 2  
22                              times the sum of the adjusted dis-  
23                              bursements from the plan for the 36  
24                              months ending on the last day of the  
25                              quarter and an enrolled actuary cer-

1                   tifies to the satisfaction of the Sec-  
2                   retary of the Treasury that such ex-  
3                   cess is the result of nonrecurring cir-  
4                   cumstances, the base amount with re-  
5                   spect to such quarter shall be deter-  
6                   mined without regard to amounts re-  
7                   lated to those nonrecurring cir-  
8                   cumstances.

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

15                  “(iv) ADJUSTED DISBURSEMENTS.—  
16                  The term ‘adjusted disbursements’ means  
17                  disbursements from the plan reduced by  
18                  the product of—

19                          “(I) the plan’s funding target at-  
20                          tainment percentage for the plan year,  
21                          and

22                          “(II) the sum of the purchases of  
23                          annuities, payments of single sums,  
24                          and such other disbursements as the

1 Secretary of the Treasury shall pro-  
2 vide in regulations.

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

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

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

16 “(j) WAIVER AMORTIZATION CHARGE.—

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

23 “(2) WAIVER AMORTIZATION INSTALLMENT.—  
24 The plan sponsor shall determine, with respect to  
25 the waiver amortization base of the plan for any

1 plan year, the amounts necessary to amortize such  
2 waiver amortization base, in level annual install-  
3 ments over a period of 5 plan years beginning with  
4 the succeeding plan year. For purposes of paragraph  
5 (1), the annual installment of such amortization for  
6 each plan year in such 5-plan year period is the  
7 waiver amortization installment for such plan year  
8 with respect to such waiver amortization base.

9 “(3) INTEREST RATE.—In determining any  
10 waiver amortization installment under this sub-  
11 section, the plan sponsor shall use the segment rates  
12 determined under subsection (f)(2) applied under  
13 rules similar to the rules of subsection (f)(2)(B).

14 “(4) WAIVER AMORTIZATION BASE.—The wai-  
15 ver amortization base of a plan for a plan year is the  
16 amount of the waived funding deficiency (if any) for  
17 such plan year under section 302(c).

18 “(5) EARLY DEEMED AMORTIZATION UPON AT-  
19 TAINMENT OF FUNDING TARGET.—In any case in  
20 which the funding shortfall of a plan for a plan year  
21 is zero, for purposes of determining the waiver am-  
22 ortization charge for such plan year and succeeding  
23 plan years, the waiver amortization base for all pre-  
24 ceding plan years shall be reduced to zero.

1       “(k) IMPOSITION OF LIEN WHERE FAILURE TO  
2 MAKE REQUIRED CONTRIBUTIONS.—

3           “(1) IN GENERAL.—In the case of a plan cov-  
4 ered under section 4021 of this Act and to which  
5 this subsection applies (as provided under paragraph  
6 (2)), if—

7           “(A) any person fails to make a contribu-  
8 tion payment required by section 302 and this  
9 section before the due date for such payment,  
10 and

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

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

23           “(2) PLANS TO WHICH SUBSECTION APPLIES.—  
24 This subsection shall apply to a defined benefit plan  
25 which is a single-employer plan for any plan year for

1       which the funding target attainment percentage (as  
2       defined in subsection (d)(2)) of such plan is less  
3       than 100 percent.

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

10              “(4) NOTICE OF FAILURE; LIEN.—

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

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

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

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

16          “(6) DEFINITIONS.—For purposes of this  
17          subsection—

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

24                 “(B) DUE DATE; REQUIRED INSTALL-  
25                 MENT.—The terms ‘due date’ and ‘required in-



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

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

9 “(g) PROHIBITION OF SHUTDOWN BENEFITS AND  
10 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS  
11 UNDER SINGLE-EMPLOYER PLANS.—

12 “(1) IN GENERAL.—No pension plan which is a  
13 single-employer plan may provide benefits to which  
14 participants are entitled solely by reason of the oc-  
15 currence of—

16 “(A) a plant shutdown, or

17 “(B) any other unpredictable contingent  
18 event.

19 “(2) UNPREDICTABLE CONTINGENT EVENT.—  
20 For purposes of this subsection, the term ‘unpredict-  
21 able contingent event’ means an event other than—

22 “(A) attainment of any age, performance  
23 of any service, receipt or derivation of any com-  
24 pensation, or the occurrence of death or dis-  
25 ability, or

1           “(B) an event which is reasonably and reli-  
2           ably predictable (as determined by the Sec-  
3           retary of the Treasury).”.

4           (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-  
5           CRUALS.—

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

9           “(h) FUNDING-BASED LIMITS ON BENEFITS AND  
10          BENEFIT    ACCRUALS    UNDER    SINGLE-EMPLOYER  
11          PLANS.—

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

14           “(A) IN GENERAL.—No amendment to a  
15          single-employer plan which has the effect of in-  
16          creasing liabilities of the plan by reason of in-  
17          creases in benefits, establishment of new bene-  
18          fits, changing the rate of benefit accrual, or  
19          changing the rate at which benefits become  
20          nonforfeitable to the plan may take effect dur-  
21          ing any plan year if the funding target attain-  
22          ment percentage as of the valuation date of the  
23          plan for such plan year is—

24           “(i) less than 80 percent, or

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

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

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

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

20                  “(2) FUNDING-BASED LIMITATION ON CERTAIN  
21                  FORMS OF DISTRIBUTION.—A single-employer plan  
22                  shall provide that, in any case in which the plan’s  
23                  funding target attainment percentage as of the valu-  
24                  ation date of the plan for a plan year is less than  
25                  80 percent, the plan may not after such date pay

1 any prohibited payment (as defined in section  
2 206(e)).

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

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

15 “(5) PRESUMED UNDERFUNDING FOR PUR-  
16 POSES OF BENEFIT LIMITATIONS BASED ON PRIOR  
17 YEAR’S FUNDING STATUS.—

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

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

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

20 “(C) PRESUMPTION OF UNDERFUNDING  
21 AFTER 4TH MONTH FOR NEARLY UNDER-  
22 FUNDED PLANS.—In any case in which—

23 “(i) a benefit limitation under para-  
24 graph (1), (2), or (3) did not apply to a  
25 plan with respect to the plan year pre-

1           ceding the current plan year, but the fund-  
2           ing target attainment percentage of the  
3           plan for such preceding plan year was not  
4           more than 10 percentage points greater  
5           than the percentage which would have  
6           caused such paragraph to apply to the plan  
7           with respect to such preceding plan year,  
8           and

9           “(ii) as of the first day of the 4th  
10          month of the current plan year, the en-  
11          rolled actuary of the plan has not certified  
12          the actual funding target attainment per-  
13          centage of the plan as of the valuation date  
14          of the plan for the current plan year,  
15          until the enrolled actuary so certifies, such first  
16          day shall be deemed, for purposes of such para-  
17          graph, to be the valuation date of the plan for  
18          the current plan year and the funding target at-  
19          tainment percentage of the plan as of such first  
20          day shall, for purposes of such paragraph, be  
21          presumed to be equal to 10 percentage points  
22          less than the funding target attainment per-  
23          centage of the plan as of the valuation date of  
24          the plan for such preceding plan year.

1           “(6) RESTORATION BY PLAN AMENDMENT OF  
2           BENEFITS OR BENEFIT ACCRUAL.—In any case in  
3           which a prohibition under paragraph (2) of the pay-  
4           ment of lump sum distributions or benefits in any  
5           other accelerated form or a cessation of benefit ac-  
6           cruals under paragraph (3) is applied to a plan with  
7           respect to any plan year and such prohibition or ces-  
8           sation, as the case may be, ceases to apply to any  
9           subsequent plan year, the plan may provide for the  
10          resumption of such benefit payment or such benefit  
11          accrual only by means of the adoption of a plan  
12          amendment after the valuation date of the plan for  
13          such subsequent plan year. The preceding sentence  
14          shall not apply to a prohibition or cessation required  
15          by reason of paragraph (5).

16          “(7) FUNDING TARGET ATTAINMENT PERCENT-  
17          AGE.—For purposes of this subsection, the term  
18          ‘funding target attainment percentage’ has the  
19          meaning provided such term under section  
20          303(d)(2).”.

21          (2) NOTICE REQUIREMENT.—

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

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

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

3 “(j) NOTICE OF FUNDING-BASED LIMITATION ON  
4 CERTAIN FORMS OF DISTRIBUTION.—The plan adminis-  
5 trator of a single-employer plan shall provide a written no-  
6 tice to plan participants and beneficiaries within 30 days  
7 after the plan has become subject to the restriction de-  
8 scribed in section 206(h)(2) or at such other time as may  
9 be determined by the Secretary.”.

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

14 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A  
15 plan shall not fail to meet the requirements of section  
16 204(g) of the Employee Retirement Income Security Act  
17 of 1974 or section 411(d)(6) of the Internal Revenue Code  
18 of 1986 solely by reason of the adoption by the plan of  
19 an amendment necessary to meet the requirements of the  
20 amendments made by this section.

21 (d) EFFECTIVE DATE.—

22 (1) SHUTDOWN BENEFITS.—Except as provided  
23 in paragraph (3), the amendments made by sub-  
24 section (a) shall apply with respect to plant shut-

1       downs, or other unpredictable contingent events, oc-  
2       curring after 2006.

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

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

14                   (A) the later of—

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

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

25                   (B) January 1, 2009.

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

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

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

11 (1) in section 101(d)(3), by striking “section  
12 302(e)” and inserting “section 303(i)”;

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

15 “(i) a statement as to whether—

16 “(I) in the case of a single-em-  
17 ployer plan, the plan’s funding target  
18 attainment percentage (as defined in  
19 section 303(d)(2)), or

20 “(II) in the case of a multiem-  
21 ployer plan, the plan’s funded percent-  
22 age (as defined in section 305(d)(2)),  
23 is at least 100 percent (and, if not, the ac-  
24 tual percentage);”;

1           (3) in section 103(d)(8)(B), by striking “the re-  
2           quirements of section 302(c)(3)” and inserting “the  
3           applicable requirements of sections 303(f) and  
4           304(c)(3)”;

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

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

9                   “(A) in the case of a single-employer plan,  
10                   the funding target (as defined in section  
11                   303(d)) of the plan, or

12                   “(B) in the case of a multiemployer plan,  
13                   the current liability (as defined in section  
14                   304(c)(6)(D)) under the plan,

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

17           (5) in section 203(a)(3)(C), by striking “section  
18           302(c)(8)” and inserting “section 302(d)(2)”;

19           (6) in section 204(g)(1), by striking “section  
20           302(c)(8)” and inserting “section 302(d)(2)”;

21           (7) in section 204(i)(2)(B), by striking “section  
22           302(c)(8)” and inserting “section 302(d)(2)”;

23           (8) in section 204(i)(3), by striking “funded  
24           current liability percentage (within the meaning of  
25           section 302(d)(8) of this Act)” and inserting “fund-

1       ing target attainment percentage (as defined in sec-  
2       tion 303(d)(2))”;

3           (9) in section 204(i)(4), by striking “section  
4       302(c)(11)(A), without regard to section  
5       302(c)(11)(B)” and inserting “section 302(b)(1),  
6       without regard to section 302(b)(2)”;

7           (10) in section 206(e)(1), by striking “section  
8       302(d)” and inserting “section 303(i)(4)”, and by  
9       striking “section 302(e)(5)” and inserting “section  
10      303(i)(4)(E)(i)”;

11          (11) in section 206(e)(3), by striking “section  
12      302(e) by reason of paragraph (5)(A) thereof” and  
13      inserting “section 303(i)(3) by reason of section  
14      303(i)(4)(A)”;

15          (12) in sections 101(e)(3), 403(c)(1), and  
16      408(b)(13), by striking “American Jobs Creation  
17      Act of 2004” and inserting “Pension Protection Act  
18      of 2005”.

19      (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—  
20      Title IV of such Act is amended—

21          (1) in section 4001(a)(13) (29 U.S.C.  
22      1301(a)(13)), by striking “302(c)(11)(A)” and in-  
23      serting “302(b)(1)”, by striking “412(c)(11)(A)”  
24      and inserting “412(b)(1)”, by striking

1 “302(e)(11)(B)” and inserting “302(b)(2)”, and by  
2 striking “412(c)(11)(B)” and inserting “412(b)(2)”;

3 (2) in section 4003(e)(1) (29 U.S.C.  
4 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and  
5 inserting “303(k)(1)(A) and (B)”, and by striking  
6 “412(n)(1)(A) and (B)” and inserting  
7 “430(k)(1)(A) and (B)”;

8 (3) in section 4010(b)(2) (29 U.S.C.  
9 1310(b)(2)), by striking “302(f)(1)(A) and (B)” and  
10 inserting “303(k)(1)(A) and (B)”, and by striking  
11 “412(n)(1)(A) and (B)” and inserting  
12 “430(k)(1)(A) and (B)”;

13 (4) in section 4011(b) (29 U.S.C. 1311(b)), by  
14 striking “to which” and all that follows and insert-  
15 ing “for any plan year for which the plan’s funding  
16 target attainment percentage (as defined in section  
17 303(d)(2)) is at least 90 percent.”;

18 (5) in section 4062(e)(1) (29 U.S.C.  
19 1362(e)(1)), by striking paragraphs (1), (2), and (3)  
20 and inserting the following:

21 “(1)(A) in the case of a single-employer plan,  
22 the sum of the shortfall amortization charge (within  
23 the meaning of section 303(c)(1) of this Act and  
24 430(c)(1) of the Internal Revenue Code of 1986)  
25 with respect to the plan (if any) for the plan year

1 in which the termination date occurs, plus the aggregate  
2 total of shortfall amortization installments (if  
3 any) determined for succeeding plan years under  
4 section 303(c)(2) of this Act and section 430(c)(2)  
5 of such Code (which, for purposes of this subparagraph,  
6 shall include any increase in such sum which  
7 would result if all applications for waivers of the  
8 minimum funding standard under section 302(c) of  
9 this Act and section 412(c) of such Code which are  
10 pending with respect to such plan were denied and  
11 if no additional contributions (other than those already  
12 made by the termination date) were made for  
13 the plan year in which the termination date occurs  
14 or for any previous plan year), or

15 “(B) in the case of a multiemployer plan, the  
16 outstanding balance of the accumulated funding deficiencies  
17 (within the meaning of section 304(a)(2) of this Act and  
18 section 431(a) of the Internal Revenue Code of 1986) of the  
19 plan (if any) (which, for purposes of this subparagraph,  
20 shall include the amount of any increase in such accumulated  
21 funding deficiencies of the plan which would result if all  
22 pending applications for waivers of the minimum  
23 funding standard under section 302(c) of this Act or  
24 section 412(c) of such Code and for extensions of  
25

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

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

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

23 “(3) in the case of a multiemployer plan, the  
24 outstanding balance of the amount of decreases in  
25 the minimum funding standard allowed before such

1 date under section 304(d) of this Act or section  
2 431(d) of such Code (if any);”;

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

5 (7) in section 4243(a)(1)(B) (29 U.S.C.  
6 1423(a)(1)(B)), by striking “302(a)” and inserting  
7 “304(a)”, and, in clause (i), by striking “302(a)”  
8 and inserting “304(a)”;

9 (8) in section 4243(f)(1) (29 U.S.C.  
10 1423(f)(1)), by striking “303(a)” and inserting  
11 “302(e)”;

12 (9) in section 4243(f)(2) (29 U.S.C.  
13 1423(f)(2)), by striking “303(c)” and inserting  
14 “302(e)(3)”;

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

17 (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4  
18 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.  
19 4 of 1978 (ratified and affirmed as law by Public Law  
20 98–532 (98 Stat. 2705)) is amended by striking  
21 “302(c)(8)” and inserting “302(d)(2)”, by striking  
22 “304(a) and (b)(2)(A)” and inserting “304(d)(1), (d)(2),  
23 and (e)(2)(A)”, and by striking “412(c)(8), (e), and  
24 (f)(2)(A)” and inserting “412(d)(2) and 431(d)(1), (d)(2),  
25 and (e)(2)(A)”.

1 (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-  
2 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.  
3 1057) is repealed.

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

6 **Subtitle B—Amendments to**  
7 **Internal Revenue Code of 1986**

8 **SEC. 111.** [SEE INTRODUCED BILL, PAGE 71, LINE 1 THROUGH PAGE  
9 140, LINE 13].

10 **Subtitle C—Other Provisions**

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

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

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

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

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

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

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

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

8 (2) For purposes of—

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

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

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

17 (c) CONFORMING AMENDMENT.—

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

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

1 **SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COM-**  
2 **PENSATION PLANS WHEN EMPLOYER DE-**  
3 **FINED BENEFIT PLAN IN AT-RISK STATUS.**

4 *[See introduced bill, page 142, line 3 through page*  
5 *143, line 16]*

6 **TITLE II—FUNDING RULES FOR**  
7 **MULTIEMPLOYER DEFINED**  
8 **BENEFIT PLANS**

9 **Subtitle A—Amendments to Em-**  
10 **ployee Retirement Income Secu-**  
11 **rity Act of 1974**

12 **SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED**  
13 **BENEFIT PLANS.**

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

18 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER  
19 PLANS

20 “SEC. 304. (a) IN GENERAL.—For purposes of sec-  
21 tion 302, the accumulated funding deficiency of a multi-  
22 employer plan for any plan year is—

23 “(1) except as provided in paragraph (2), the  
24 amount, determined as of the end of the plan year,  
25 equal to the excess (if any) of the total charges to  
26 the funding standard account of the plan for all plan

1 years (beginning with the first plan year for which  
2 this part applies to the plan) over the total credits  
3 to such account for such years, and

4 “(2) if the multiemployer plan is in reorganiza-  
5 tion for any plan year, the accumulated funding de-  
6 ficiency of the plan determined under section 4243.

7 “(b) FUNDING STANDARD ACCOUNT.—

8 “(1) ACCOUNT REQUIRED.—Each multiem-  
9 ployer plan to which this part applies shall establish  
10 and maintain a funding standard account. Such ac-  
11 count shall be credited and charged solely as pro-  
12 vided in this section.

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

16 “(A) the normal cost of the plan for the  
17 plan year,

18 “(B) the amounts necessary to amortize in  
19 equal annual installments (until fully amor-  
20 tized)—

21 “(i) in the case of a plan in existence  
22 on January 1, 1974, the unfunded past  
23 service liability under the plan on the first  
24 day of the first plan year to which this sec-

1                   tion applies, over a period of 40 plan  
2                   years,

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

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

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

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

23                  “(C) the amount necessary to amortize  
24                  each waived funding deficiency (within the  
25                  meaning of section 302(c)(3)) for each prior

1 plan year in equal annual installments (until  
2 fully amortized) over a period of 15 plan years,

3 “(D) the amount necessary to amortize in  
4 equal annual installments (until fully amor-  
5 tized) over a period of 5 plan years any amount  
6 credited to the funding standard account under  
7 section 302(b)(3)(D) (as in effect on the day  
8 before the date of the enactment of the Pension  
9 Protection Act of 2005), and

10 “(E) the amount necessary to amortize in  
11 equal annual installments (until fully amor-  
12 tized) over a period of 20 years the contribu-  
13 tions which would be required to be made under  
14 the plan but for the provisions of section  
15 302(c)(7)(A)(i)(I) (as in effect on the day be-  
16 fore the date of the enactment of the Pension  
17 Protection Act of 2005).

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

21 “(A) the amount considered contributed by  
22 the employer to or under the plan for the plan  
23 year,

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

4           “(i) separately, with respect to each  
5 plan year, the net decrease (if any) in un-  
6 funded past service liability under the plan  
7 arising from plan amendments adopted in  
8 such year, over a period of 15 plan years,

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

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

18           “(C) the amount of the waived funding de-  
19 ficiency (within the meaning of section  
20 302(c)(3)) for the plan year, and

21           “(D) in the case of a plan year for which  
22 the accumulated funding deficiency is deter-  
23 mined under the funding standard account if  
24 such plan year follows a plan year for which  
25 such deficiency was determined under the alter-

1           native minimum funding standard under section  
2           305 (as in effect on the day before the date of  
3           the enactment of the Pension Protection Act of  
4           2005), the excess (if any) of any debit balance  
5           in the funding standard account (determined  
6           without regard to this subparagraph) over any  
7           debit balance in the alternative minimum fund-  
8           ing standard account.

9           “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-  
10          ORTIZED TO PLAN YEARS BEFORE 2006.—In the case  
11          of any amount amortized under section 302(b) (as  
12          in effect on the day before the date of the enactment  
13          of the Pension Protection Act of 2005) over any pe-  
14          riod beginning with a plan year beginning before  
15          2006, in lieu of the amortization described in para-  
16          graphs (2)(B) and (3)(B), such amount shall con-  
17          tinue to be amortized under such section as so in ef-  
18          fect.

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

24                 “(A) may be combined into one amount  
25                 under such paragraph to be amortized over a

1 period determined on the basis of the remaining  
2 amortization period for all items entering into  
3 such combined amount, and

4 “(B) may be offset against amounts re-  
5 quired to be amortized under the other such  
6 paragraph, with the resulting amount to be am-  
7 ortized over a period determined on the basis of  
8 the remaining amortization periods for all items  
9 entering into whichever of the two amounts  
10 being offset is the greater.

11 “(6) INTEREST.—Except as provided in sub-  
12 section (c)(9), the funding standard account (and  
13 items therein) shall be charged or credited (as deter-  
14 mined under regulations prescribed by the Secretary  
15 of the Treasury) with interest at the appropriate  
16 rate consistent with the rate or rates of interest used  
17 under the plan to determine costs.

18 “(7) CERTAIN AMORTIZATION CHARGES AND  
19 CREDITS.—In the case of a plan which, immediately  
20 before the date of the enactment of the Multiem-  
21 ployer Pension Plan Amendments Act of 1980, was  
22 a multiemployer plan (within the meaning of section  
23 3(37) as in effect immediately before such date)—

24 “(A) any amount described in paragraph  
25 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-

1 section which arose in a plan year beginning be-  
2 fore such date shall be amortized in equal an-  
3 nual installments (until fully amortized) over 40  
4 plan years, beginning with the plan year in  
5 which the amount arose;

6 “(B) any amount described in paragraph  
7 (2)(B)(iv) or (3)(B)(ii) of this subsection which  
8 arose in a plan year beginning before such date  
9 shall be amortized in equal annual installments  
10 (until fully amortized) over 20 plan years, be-  
11 ginning with the plan year in which the amount  
12 arose;

13 “(C) any change in past service liability  
14 which arises during the period of 3 plan years  
15 beginning on or after such date, and results  
16 from a plan amendment adopted before such  
17 date, shall be amortized in equal annual install-  
18 ments (until fully amortized) over 40 plan  
19 years, beginning with the plan year in which the  
20 change arises; and

21 “(D) any change in past service liability  
22 which arises during the period of 2 plan years  
23 beginning on or after such date, and results  
24 from the changing of a group of participants

1 from one benefit level to another benefit level  
2 under a schedule of plan benefits which—

3 “(i) was adopted before such date,  
4 and

5 “(ii) was effective for any plan partici-  
6 pant before the beginning of the first plan  
7 year beginning on or after such date,  
8 shall be amortized in equal annual installments  
9 (until fully amortized) over 40 plan years, be-  
10 ginning with the plan year in which the change  
11 arises.

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

15 “(A) WITHDRAWAL LIABILITY.—Any  
16 amount received by a multiemployer plan in  
17 payment of all or part of an employer’s with-  
18 drawal liability under part 1 of subtitle E of  
19 title IV shall be considered an amount contrib-  
20 uted by the employer to or under the plan. The  
21 Secretary of the Treasury may prescribe by reg-  
22 ulation additional charges and credits to a mul-  
23 tiemployer plan’s funding standard account to  
24 the extent necessary to prevent withdrawal li-

1 ability payments from being unduly reflected as  
2 advance funding for plan liabilities.

3 “(B) ADJUSTMENTS WHEN A MULTIEM-  
4 PLOYER PLAN LEAVES REORGANIZATION.—If a  
5 multiemployer plan is not in reorganization in  
6 the plan year but was in reorganization in the  
7 immediately preceding plan year, any balance in  
8 the funding standard account at the close of  
9 such immediately preceding plan year—

10 “(i) shall be eliminated by an offset-  
11 ting credit or charge (as the case may be),  
12 but

13 “(ii) shall be taken into account in  
14 subsequent plan years by being amortized  
15 in equal annual installments (until fully  
16 amortized) over 30 plan years.

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

21 “(C) PLAN PAYMENTS TO SUPPLEMENTAL  
22 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT  
23 FUND.—Any amount paid by a plan during a  
24 plan year to the Pension Benefit Guaranty Cor-  
25 poration pursuant to section 4222 of this Act or

1 to a fund exempt under section 501(c)(22) of  
2 the Internal Revenue Code of 1986 pursuant to  
3 section 4223 of this Act shall reduce the  
4 amount of contributions considered received by  
5 the plan for the plan year.

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

15 “(E) ELECTION FOR DEFERRAL OF  
16 CHARGE FOR PORTION OF NET EXPERIENCE  
17 LOSS.—If an election is in effect under section  
18 302(b)(7)(F) (as in effect on the day before the  
19 date of the enactment of the Pension Protection  
20 Act of 2005) for any plan year, the funding  
21 standard account shall be charged in the plan  
22 year to which the portion of the net experience  
23 loss deferred by such election was deferred with  
24 the amount so deferred (and paragraph

1           (2)(B)(iv) shall not apply to the amount so  
2 charged).

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

10           “(G) SHORT-TERM BENEFITS.—To the ex-  
11 tent that any plan amendment increases the un-  
12 funded past service liability under the plan by  
13 reason of an increase in benefits which are pay-  
14 able under the plan during a period that does  
15 not exceed 14 years, paragraph (2)(B)(iii) shall  
16 be applied separately with respect to such in-  
17 crease in unfunded past service liability by sub-  
18 stituting the number of years of the period dur-  
19 ing which such benefits are payable for ‘15’.

20           “(c) ADDITIONAL RULES.—

21           “(1) DETERMINATIONS TO BE MADE UNDER  
22 FUNDING METHOD.—For purposes of this part, nor-  
23 mal costs, accrued liability, past service liabilities,  
24 and experience gains and losses shall be determined

1 under the funding method used to determine costs  
2 under the plan.

3 “(2) VALUATION OF ASSETS.—

4 “(A) IN GENERAL.—For purposes of this  
5 part, the value of the plan’s assets shall be de-  
6 termined on the basis of any reasonable actu-  
7 arial method of valuation which takes into ac-  
8 count fair market value and which is permitted  
9 under regulations prescribed by the Secretary of  
10 the Treasury.

11 “(B) ELECTION WITH RESPECT TO  
12 BONDS.—The value of a bond or other evidence  
13 of indebtedness which is not in default as to  
14 principal or interest may, at the election of the  
15 plan administrator, be determined on an amor-  
16 tized basis running from initial cost at purchase  
17 to par value at maturity or earliest call date.  
18 Any election under this subparagraph shall be  
19 made at such time and in such manner as the  
20 Secretary of the Treasury shall by regulations  
21 provide, shall apply to all such evidences of in-  
22 debtedness, and may be revoked only with the  
23 consent of such Secretary.

24 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-  
25 SONABLE.—For purposes of this section, all costs, li-

1 abilities, rates of interest, and other factors under  
2 the plan shall be determined on the basis of actu-  
3 arial assumptions and methods—

4 “(A) which, in the aggregate, are reason-  
5 able (taking into account the experience of the  
6 plan and reasonable expectations), and

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

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

13 “(A) a change in benefits under the Social  
14 Security Act or in other retirement benefits cre-  
15 ated under Federal or State law, or

16 “(B) a change in the definition of the term  
17 ‘wages’ under section 3121 of the Internal Rev-  
18 enue Code of 1986, or a change in the amount  
19 of such wages taken into account under regula-  
20 tions prescribed for purposes of section  
21 401(a)(5) of such Code,

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

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

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

7           “(B) all amounts described in subpara-  
8 graphs (B), (C), and (D) of subsection (b) (2)  
9 and subparagraph (B) of subsection (b)(3)  
10 which are required to be amortized shall be con-  
11 sidered fully amortized for purposes of such  
12 subparagraphs.

13           “(6) FULL-FUNDING LIMITATION.—

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

17           “(i) the accrued liability (including  
18 normal cost) under the plan (determined  
19 under the entry age normal funding meth-  
20 od if such accrued liability cannot be di-  
21 rectly calculated under the funding method  
22 used for the plan), over

23           “(ii) the lesser of—

24           “(I) the fair market value of the  
25 plan’s assets, or

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

3                   “(B) MINIMUM AMOUNT.—

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

8                   “(I) 90 percent of the current li-  
9                   ability of the plan (including the ex-  
10                  pected increase in current liability due  
11                  to benefits accruing during the plan  
12                  year), over

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

15                  “(ii) ASSETS.—For purposes of clause  
16                  (i), assets shall not be reduced by any  
17                  credit balance in the funding standard ac-  
18                  count.

19                  “(C) FULL FUNDING LIMITATION.—For  
20                  purposes of this paragraph, unless otherwise  
21                  provided by the plan, the accrued liability under  
22                  a multiemployer plan shall not include benefits  
23                  which are not nonforfeitable under the plan  
24                  after the termination of the plan (taking into

1 consideration section 411(d)(3) of the Internal  
2 Revenue Code of 1986).

3 “(D) CURRENT LIABILITY.—For purposes  
4 of this paragraph—

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

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

12 “(I) age, service, compensation,  
13 death, or disability, or

14 “(II) an event which is reason-  
15 ably and reliably predictable (as deter-  
16 mined by the Secretary of the Treas-  
17 ury),

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

21 “(iii) INTEREST RATE USED.—The  
22 rate of interest used to determine current  
23 liability under this paragraph shall be the  
24 rate of interest determined under subpara-  
25 graph (E).

1 “(iv) MORTALITY TABLES.—

2 “(I) COMMISSIONERS’ STANDARD  
3 TABLE.—In the case of plan years be-  
4 ginning before the first plan year to  
5 which the first tables prescribed under  
6 subclause (II) apply, the mortality  
7 table used in determining current li-  
8 ability under this paragraph shall be  
9 the table prescribed by the Secretary  
10 of the Treasury which is based on the  
11 prevailing commissioners’ standard  
12 table (described in section  
13 807(d)(5)(A) of the Internal Revenue  
14 Code of 1986) used to determine re-  
15 serves for group annuity contracts  
16 issued on January 1, 1993.

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

1 such experience. In prescribing such  
2 tables, such Secretary shall take into  
3 account results of available inde-  
4 pendent studies of mortality of indi-  
5 viduals covered by pension plans.

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

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

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

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

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

24                   “(i) IN GENERAL.—If any rate of in-  
25 terest used under the plan under sub-

1 section (b)(6) to determine cost is not  
2 within the permissible range, the plan shall  
3 establish a new rate of interest within the  
4 permissible range.

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

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

17 “(II) SECRETARIAL AUTHOR-  
18 ITY.—If the Secretary of the Treasury  
19 finds that the lowest rate of interest  
20 permissible under subclause (I) is un-  
21 reasonably high, such Secretary may  
22 prescribe a lower rate of interest, ex-  
23 cept that such rate may not be less  
24 than 80 percent of the average rate  
25 determined under such subclause.

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

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

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

12                   “(7) ANNUAL VALUATION.—

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

21                               “(B) VALUATION DATE.—

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

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

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

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

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

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

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

17                 “(A) 150 percent of the Federal mid-term  
18                 rate (as in effect under section 1274 of the In-  
19                 ternal Revenue Code of 1986 for the 1st month  
20                 of such plan year), or

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

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

1           “(1) AUTOMATIC EXTENSION.—The Secretary  
2 of the Treasury shall, upon application and subject  
3 to the requirements of paragraph (3), extend the pe-  
4 riod of years required to amortize any unfunded li-  
5 ability (described in any clause of subsection  
6 (b)(2)(B)) of the plan for a period of time not in ex-  
7 cess of 5 years.

8           “(2) EXTENSION FOR CAUSE.—The period of  
9 years required to amortize any unfunded liability  
10 (described in any clause of subsection (b)(2)(B)) of  
11 any multiemployer plan may be extended (in addi-  
12 tion to any extension under paragraph (1)) by the  
13 Secretary of the Treasury for a period of time (not  
14 in excess of 5 years) if he determines that such ex-  
15 tension would carry out the purposes of this Act and  
16 would provide adequate protection for participants  
17 under the plan and their beneficiaries and if he de-  
18 termines that the failure to permit such extension  
19 would—

20                   “(A) result in—

21                           “(i) a substantial risk to the voluntary  
22 continuation of the plan, or

23                           “(ii) a substantial curtailment of pen-  
24 sion benefit levels or employee compensa-  
25 tion, and

1           “(B) be adverse to the interests of plan  
2 participants in the aggregate.

3           “(3) ADVANCE NOTICE.—

4           “(A) IN GENERAL.—The Secretary of the  
5 Treasury shall, before granting an extension  
6 under this section, require each applicant to  
7 provide evidence satisfactory to such Secretary  
8 that the applicant has provided notice of the fil-  
9 ing of the application for such extension to each  
10 affected party (as defined in section  
11 4001(a)(21)) with respect to the affected plan.  
12 Such notice shall include a description of the  
13 extent to which the plan is funded for benefits  
14 which are guaranteed under title IV and for  
15 benefit liabilities.

16           “(B) CONSIDERATION OF RELEVANT IN-  
17 FORMATION.—The Secretary of the Treasury  
18 shall consider any relevant information provided  
19 by a person to whom notice was given under  
20 paragraph (1).”.

21           (b) CONFORMING AMENDMENTS.—

22           (1) Section 301 of the Employee Retirement In-  
23 come Security Act of 1974 (29 U.S.C. 1081) is  
24 amended by striking subsection (d).

1           (2) The table of contents in section 1 of such  
2 Act (as amended by section 102 of this Act) is  
3 amended further by inserting after the item relating  
4 to section 303 the following new item:

“Sec. 304. Minimum funding standards for multiemployer plans.”.

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

7 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
8 **PLOYER PLANS IN ENDANGERED OR CRIT-**  
9 **ICAL STATUS.**

10          (a) IN GENERAL.—Part 3 of subtitle B of title I of  
11 the Employee Retirement Income Security Act of 1974 (as  
12 amended by the preceding provisions of this Act) is  
13 amended further by inserting after section 304 the fol-  
14 lowing new section:

15          “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER  
16 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

17          “SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN  
18 ACTUARY.—

19                 “(1) IN GENERAL.—During the 90-day period  
20 beginning on first day of each plan year of a multi-  
21 employer plan, the plan actuary shall certify to the  
22 Secretary of the Treasury whether or not the plan  
23 is in endangered status for such plan year and  
24 whether or not the plan is in critical status for such  
25 plan year.

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

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

15          “(B) DETERMINATIONS OF FUTURE CON-  
16          TRIBUTIONS.—Any such actuarial projection of  
17          plan assets shall assume—

18                 “(i) reasonably anticipated employer  
19                 and employee contributions for the current  
20                 and succeeding plan years, assuming that  
21                 the terms of the one or more collective bar-  
22                 gaining agreements pursuant to which the  
23                 plan is maintained for the current plan  
24                 year continue in effect for succeeding plan  
25                 years, or

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

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

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

1       “(b) FUNDING RULES FOR MULTIEMPLOYER PLANS  
2 IN ENDANGERED STATUS.—

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

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

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

21           “(B) the plan has an accumulated funding  
22 deficiency for such plan year under section 304  
23 or is projected to have such an accumulated  
24 funding deficiency for any of the 6 succeeding

1 plan years, taking into account any extension of  
2 amortization periods under section 304(d).

3 “(3) FUNDING IMPROVEMENT PLAN.—

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

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

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

19 “(II)  $\frac{2}{3}$  of the difference between  
20 100 percent and the plan’s funded  
21 percentage for the first year of the  
22 funding improvement period.

23 “(ii) AVOIDANCE OF ACCUMULATED  
24 FUNDING DEFICIENCIES.—No accumulated  
25 funding deficiency for any plan year during

1 the funding improvement period (taking  
2 into account any extension of amortization  
3 periods under section 304(d)).

4 “(B) FUNDING IMPROVEMENT PERIOD.—

5 The funding improvement period for any fund-  
6 ing improvement plan adopted pursuant to this  
7 subsection is the 10-year period beginning on  
8 the earlier of—

9 “(i) the second anniversary of the  
10 date of the adoption of the funding im-  
11 provement plan, or

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

20 “(C) REPORTING.—A summary of any  
21 funding improvement plan or modification  
22 thereto adopted during any plan year, together  
23 with annual updates regarding the funding  
24 ratio of the plan, shall be included in the an-  
25 nual report for such plan year under section

1           104(a) and in the summary annual report de-  
2           scribed in section 104(b)(3).

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

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

11                   “(i) an increase in the plan’s funded  
12           percentage, and

13                   “(ii) postponement of an accumulated  
14           funding deficiency for at least 1 additional  
15           plan year.

16          Such actions include applications for extensions  
17          of amortization periods under section 304(d),  
18          use of the shortfall funding method in making  
19          funding standard account computations,  
20          amendments to the plan’s benefit structure, re-  
21          ductions in future benefit accruals, and other  
22          reasonable actions consistent with the terms of  
23          the plan and applicable law.

24                   “(B) RECOMMENDATIONS BY PLAN SPON-  
25           SOR.—

1                   “(i) IN GENERAL.—During the period  
2                   of 90 days following the date on which a  
3                   multiemployer plan is certified to be in en-  
4                   dangered status, the plan sponsor shall de-  
5                   velop and provide to the bargaining parties  
6                   alternative proposals for revised benefit  
7                   structures, contribution structures, or  
8                   both, which, if adopted as amendments to  
9                   the plan, may be reasonably expected to  
10                  meet the benchmarks described in para-  
11                  graph (3)(A). Such proposals shall  
12                  include—

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

24                   “(II) at least one proposal for in-  
25                   creases in contributions under the

1 plan necessary to achieve the bench-  
2 marks, assuming no amendments re-  
3 ducing future benefit accruals under  
4 the plan.

5 “(ii) REQUESTS BY BARGAINING PAR-  
6 TIES.—Upon the request of any bargaining  
7 party who—

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

10 “(II) represents as an employee  
11 organization, for purposes of collective  
12 bargaining, at least 5 percent of the  
13 active participants,

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

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

1           “(5) MAINTENANCE OF CONTRIBUTIONS PEND-  
2           ING APPROVAL OF FUNDING IMPROVEMENT PLAN.—  
3           Pending approval of a funding improvement plan by  
4           the bargaining parties with respect to a multiem-  
5           ployer plan, the multiemployer plan may not be  
6           amended so as to provide—

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

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

11                  “(C) any new direct or indirect exclusion  
12                  of younger or newly hired employees from plan  
13                  participation.

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

19                   “(A) RESTRICTIONS ON LUMP SUM DIS-  
20                   TRIBUTIONS AND SIMILAR DISTRIBUTIONS.—  
21                   The multiemployer plan may not be amended so  
22                   as to provide any additional optional forms of  
23                   benefit.

24                   “(B) PROHIBITION ON BENEFIT IN-  
25                   CREASES.—

1                   “(i) IN GENERAL.—No amendment of  
2                   the plan which increases the liabilities of  
3                   the plan by reason of any increase in bene-  
4                   fits, any change in the accrual of benefits,  
5                   or any change in the rate at which benefits  
6                   become nonforfeitable under the plan may  
7                   be adopted.

8                   “(ii) EXCEPTION.—Clause (i) shall  
9                   not apply to any plan amendment which is  
10                  required as a condition of qualification  
11                  under part I of subchapter D of chapter 1  
12                  of subtitle A of the Internal Revenue Code  
13                  of 1986.

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

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

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

3           “(B) so as to increase future benefit accru-  
4 als, unless the plan actuary certifies in advance  
5 that, after taking into account the proposed in-  
6 crease, the plan is reasonably expected to meet  
7 the the benchmarks described in paragraph  
8 (3)(A).

9           “(c) FUNDING RULES FOR MULTIEMPLOYER PLANS  
10 IN CRITICAL STATUS.—

11           “(1) IN GENERAL.—In any case in which a  
12 multiemployer plan is in critical status for a plan  
13 year and no rehabilitation plan under this subsection  
14 with respect to such multiemployer plan is in effect  
15 for the plan year, the plan sponsor shall, in accord-  
16 ance with this subsection, amend the multiemployer  
17 plan to include a rehabilitation plan under this sub-  
18 section. The amendment shall be adopted not later  
19 than 240 days after the date on which the plan en-  
20 ters into critical status.

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

23           “(A) the plan is in endangered status for  
24 the preceding plan year and the requirements of

1 subsection (b)(1) were not met with respect to  
2 the plan for such preceding plan year, or

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

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

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

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

15 “(ii) the sum of—

16 “(I) the market value of plan as-  
17 sets, plus

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

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

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

13 “(i) the market value of plan assets,  
14 plus

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

24 is less than the present value of all nonforfeit-  
25 able benefits for all participants and bene-

1           ficiaries projected to be payable under the plan  
2           during the current plan year and each of the 4  
3           succeeding plan years (plus administrative ex-  
4           penses for such plan years).

5           “(C) A plan is described in this subpara-  
6           graph if—

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

10                   “(ii) the plan has an accumulated  
11                   funding deficiency for the current plan  
12                   year or is projected to have an accumu-  
13                   lated funding deficiency for any of the 4  
14                   succeeding plan years, taking into account  
15                   any extension of amortization periods  
16                   under section 304(d).

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

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

1           “(II) the present value, as of the be-  
2           ginning of the current plan year, of the  
3           reasonably anticipated employer and em-  
4           ployee contributions for the current plan  
5           year,

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

13          “(iii) the plan is projected to have an  
14          accumulated funding deficiency for the  
15          current plan year or any of the 4 suc-  
16          ceeding plan years.

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

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

22                 “(ii) the plan is projected to have an  
23                 accumulated funding deficiency during any  
24                 of the succeeding 3 plan years.

25          “(4) REHABILITATION PLAN.—

1           “(A) IN GENERAL.—A rehabilitation plan  
2 shall consist of—

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

13                   “(ii) reasonable measures to forestall  
14                   possible insolvency (within the meaning of  
15                   section 4245) if the plan sponsor deter-  
16                   mines that, upon exhaustion of all reason-  
17                   able measures, the plan would not cease  
18                   during the rehabilitation period to be in  
19                   critical status.

20                  “(B) REHABILITATION PERIOD.—The re-  
21                  habilitation period for any rehabilitation plan  
22                  adopted pursuant to this section is the 10-year  
23                  period beginning on the earlier of—

1                   “(i) the second anniversary of the  
2                   date of the adoption of the rehabilitation  
3                   plan, or

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

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

21                  “(5) DEVELOPMENT OF REHABILITATION  
22                  PLAN.—

23                  “(A) PROPOSALS BY PLAN SPONSOR.—

24                  “(i) IN GENERAL.—Within 90 days  
25                  after the date of entry into critical status

1 (or the date as of which the requirements  
2 of subsection (b)(1) are not met with re-  
3 spect to the plan), the plan sponsor shall  
4 propose to all bargaining parties a range of  
5 alternative schedules of increases in con-  
6 tributions and reductions in future benefit  
7 accruals that would serve to carry out a re-  
8 habilitation plan under this subsection.

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

17 “(iii) PROPOSAL WHERE CONTRIBU-  
18 TIONS ARE NECESSARY.—If the plan spon-  
19 sor determines that the plan will not cease  
20 to be in critical status during the rehabili-  
21 tation period unless the plan is amended to  
22 provide for an increase in contributions,  
23 the plan sponsor’s proposals shall include a  
24 schedule of those increases in contribution  
25 rates that would be necessary to cause the

1 plan to cease to be in critical status if fu-  
2 ture benefit accruals were reduced to the  
3 maximum extent permitted by law and the  
4 rate of future benefit accruals did not ex-  
5 ceed 1 percent per plan year.

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

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

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

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

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

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

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

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

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

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

1           “(B) so as to increase future benefit accru-  
2           als, unless the plan actuary certifies in advance  
3           that, after taking into account the proposed in-  
4           crease, the plan is reasonably expected to cease  
5           to be in critical status.

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

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

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

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

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

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

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

10           “(A) the numerator of which is the value  
11           of the plan’s assets, as determined under sec-  
12           tion 304(c)(2), and

13           “(B) the denominator of which is the ac-  
14           crued liability of the plan.

15           “(3) ACCUMULATED FUNDING DEFICIENCY.—  
16           The term ‘accumulated funding deficiency’ has the  
17           meaning provided such term in section 304(a).

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

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

1           “(A) is not in covered service under the  
2           plan, and

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

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

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

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

17          “(7) OBLIGATION TO CONTRIBUTE.—The term  
18          ‘obligation to contribute’ has the meaning provided  
19          such term under section 4212(a).

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

1 (b) CONFORMING AMENDMENT.—The table of con-  
2 tents in section 1 of such Act (as amended by the pre-  
3 ceding provisions of this Act) is amended further by in-  
4 serting after the item relating to section 304 the following  
5 new item:

“Sec. 305. Additional funding rules for multiemployer plans in endangered sta-  
tus or critical status.”.

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

9 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**  
10 **TIEMPLOYER PLANS.**

11 (a) ADVANCE DETERMINATION OF IMPENDING IN-  
12 SOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the  
13 Employee Retirement Income Security Act of 1974 (29  
14 U.S.C. 1426(d)(1)) is amended—

15 (1) by striking “3 plan years” the second place  
16 it appears and inserting “5 plan years”; and

17 (2) by adding at the end the following new sen-  
18 tence: “If the plan sponsor makes such a determina-  
19 tion that the plan will be insolvent in any of the next  
20 5 plan years, the plan sponsor shall make the com-  
21 parison under this paragraph at least annually until  
22 the plan sponsor makes a determination that the  
23 plan will not be insolvent in any of the next 5 plan  
24 years.”.

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

4 **SEC. 204. WITHDRAWAL LIABILITY REFORMS.**

5 (a) REPEAL OF LIMITATION ON WITHDRAWAL LI-  
6 ABILITY IN THE EVENT OF CERTAIN SALES OF EM-  
7 PLOYER ASSETS TO UNRELATED PARTIES.—

8 (1) IN GENERAL.—Section 4225 of the Em-  
9 ployee Retirement Income Security Act of 1974 (29  
10 U.S.C. 1405) is repealed.

11 (2) CONFORMING AMENDMENT.—The table of  
12 contents in section 1 of such Act is amended by  
13 striking the item relating to section 4225.

14 (3) EFFECTIVE DATE.—The amendments made  
15 by this section shall apply with respect to sales oc-  
16 ccurring on or after January 1, 2006.

17 (b) REPEAL OF LIMITATION TO 20 ANNUAL PAY-  
18 MENTS.—

19 (1) IN GENERAL.—Section 4219(c)(1) of such  
20 Act (29 U.S.C. 1399(c)(1)) is amended by striking  
21 subparagraph (B).

22 (2) EFFECTIVE DATE.—The amendment made  
23 by this section shall apply with respect to with-  
24 drawals occurring on or after January 1, 2006.

1 (c) PARTIAL WITHDRAWALS BY MEANS OF  
2 OUTSOURCING.—

3 (1) IN GENERAL.—Section 4205(b)(2)(A) of  
4 such Act (29 U.S.C. 1385(b)(2)(A)) is amended—

5 (A) by striking “or” at the end of clause  
6 (i);

7 (B) by striking “ceased.” at the end of  
8 clause (ii) and inserting “ceased, or”; and

9 (C) by adding at the end the following new  
10 clause:

11 “(iii) an employer continues to per-  
12 form work of the type for which contribu-  
13 tions are made under the plan by means of  
14 services of individuals who are not employ-  
15 ees of such employer covered by such  
16 plan.”.

17 (2) EFFECTIVE DATE.—The amendment made  
18 by this subsection shall apply with respect to work  
19 performed on or after January 1, 2006.

20 (d) REPEAL OF SPECIAL RULE FOR LONG AND  
21 SHORT HAUL TRUCKING INDUSTRY.—

22 (1) IN GENERAL.—Subsection (d) of section  
23 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

24 (2) EFFECTIVE DATE.—The repeal under this  
25 subsection shall apply with respect to cessations to

1 have obligations to contribute to multiemployer  
2 plans and cessations of covered operations under  
3 such plans occurring on or after January 1, 2006.

4 (e) APPLICATION OF FORGIVENESS RULE TO PLANS  
5 PRIMARILY COVERING EMPLOYEES IN THE BUILDING  
6 AND CONSTRUCTION.—

7 (1) IN GENERAL.—Section 4210(b) of such Act  
8 (29 U.S.C. 1390(b)) is amended—

9 (A) by striking paragraph (1); and

10 (B) by redesignating paragraphs (2)  
11 through (4) as paragraphs (1) through (3), re-  
12 spectively.

13 (2) EFFECTIVE DATE.—The amendments made  
14 by this subsection shall apply with respect to plan  
15 withdrawals occurring on or after January 1, 2006.

16 **SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO**  
17 **PROCEDURES APPLICABLE TO DISPUTES IN-**  
18 **VOLVING WITHDRAWAL LIABILITY.**

19 (a) IN GENERAL.—Section 4221(f)(1) of the Em-  
20 ployee Retirement Income Security Act of 1974 (29  
21 U.S.C. 1401(f)(1)) is amended—

22 (1) in subparagraph (A) by inserting “and”  
23 after “plan,” and

24 (2) by striking subparagraphs (B) and (C) and  
25 inserting the following new subparagraph:

1           “(B) such determination is based in whole  
2           or in part on a finding by the plan sponsor  
3           under section 4212(c) that a principal purpose  
4           of any transaction which occurred at least 5  
5           years (2 years in the case of a small employer)  
6           before the date of the complete or partial with-  
7           drawal was to evade or avoid withdrawal liabil-  
8           ity under this subtitle.”.

9           (b) SMALL EMPLOYER.—Paragraph (2) of section  
10          4221(f) of such Act is amended by adding at the end the  
11          following new subparagraph:

12                   “(C) SMALL EMPLOYER.—For purposes of  
13          paragraph (1)(B)—

14                           “(i) IN GENERAL.—The term ‘small  
15                           employer’ means any employer who (as of  
16                           immediately before the transaction referred  
17                           to in paragraph (1)(B))—

18                                   “(I) employs not more than 500  
19                                   employees, and

20   “(II) is required to make con-  
21   tributions to the plan for not more  
22   than 250 employees.

23                           “(ii) CONTROLLED GROUP.—Any  
24                           group treated as a single employer under  
25                           subsection (b), (c), (m), or (o) of section

1           414 of the Internal Revenue Code of 1986  
2           shall be treated as a single employer for  
3           purposes of this subparagraph.”.

4           (c) ADDITIONAL AMENDMENTS.—

5           (1) Subparagraph (A) of section 4221(f)(2) of  
6           such Act (29 U.S.C. 1401(f)(2)) is amended by  
7           striking “Notwithstanding” and inserting “In the  
8           case of a transaction occurring before January 1,  
9           1999, and at least 5 years before the date of the  
10          complete or partial withdrawal, notwithstanding”.

11          (2) Section 4221(f)(2)(B) of such Act (29  
12          U.S.C. 1401(f)(2)(B)) is amended—

13                 (A) by inserting “with respect to with-  
14                 drawal liability payments” after “determina-  
15                 tion” the first place it appears, and

16                 (B) by striking “any” and inserting “the”.

17          (d) EFFECTIVE DATE.—The amendments made by  
18          this section shall apply to any employer that receives a  
19          notification under section 4219(b)(1) of the Employee Re-  
20          tirement Income Security Act of 1974 on or after the date  
21          of the enactment of this Act.

1           **Subtitle B—Amendments to**  
2           **Internal Revenue Code of 1986**

3 **SEC. 211.** *[SEE INTRODUCED BILL, PAGE 200, LINE 8 THROUGH*  
4                                   *PAGE 251, LINE 15].*

5           **TITLE III—OTHER INTEREST-**  
6           **RELATED FUNDING PROVISIONS**

7 **SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINA-**  
8                                   **TION OF LUMP SUM DISTRIBUTIONS.**

9           (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-  
10 COME SECURITY ACT OF 1974.—Subparagraph (B) of  
11 section 205(g)(3) of the Employee Retirement Income Se-  
12 curity Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to  
13 read as follows:

14           “(B) For purposes of subparagraph (A)—

15                   “(i) The term ‘applicable mortality table’ means  
16 a mortality table, modified as appropriate by the  
17 Secretary of the Treasury, based on the mortality  
18 table specified for the plan year under section  
19 303(f)(3).

20                   “(ii) The term ‘applicable interest rate’ means  
21 the adjusted first, second, and third segment rates  
22 applied under rules similar to the rules of section  
23 303(f)(2)(B) for the month before the date of the  
24 distribution or such other time as the Secretary of  
25 the Treasury may by regulations prescribe.

1           “(iii) For purposes of clause (ii), the adjusted  
 2 first, second, and third segment rates are the first,  
 3 second, and third segment rates which would be de-  
 4 termined under section 303(f)(2)(C) if—

5           “(I) section 303(f)(2)(D)(i) were applied  
 6 by substituting ‘the yields’ for ‘a 3-year weight-  
 7 ed average of yields’,

8           “(II) section 303(f)(2)(G)(i)(II) were ap-  
 9 plied by substituting ‘section  
 10 205(g)(3)(A)(ii)(II)’ for ‘section  
 11 302(b)(5)(B)(ii)(II)’, and

12           “(III) the applicable percentage under sec-  
 13 tion 303(f)(2)(G) were determined in accord-  
 14 ance with the following table:

<b>“In the case of plan years beginning in:</b>	<b>The applicable percentage is:</b>
2006 .....	20 percent
2007 .....	40 percent
2008 .....	60 percent
2009 .....	80 percent.”.

15           (b) AMENDMENTS TO INTERNAL REVENUE CODE OF  
 16 1986.—[*See introduced bill, page 252, line 19 through page*  
 17 *254, line 5*]

18           (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A  
 19 plan shall not fail to meet the requirements of section  
 20 204(g) of the Employee Retirement Income Security Act  
 21 of 1974 solely by reason of the adoption by the plan of

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

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to plan years begin-  
5 ning after 2005.

6 **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**  
7 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**  
8 **TRIBUTIONS.**

9 [*See introduced bill, page 254, line 6 through page*  
10 *255, line 7*]

11 **TITLE IV—IMPROVEMENTS IN**  
12 **PBGC GUARANTEE PROVISIONS**

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

14 (a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of  
15 the Employee Retirement Income Security Act of 1974  
16 (29 U.S.C. 1306(a)(3)) is amended—

17 (1) by striking clause (i) of subparagraph (A)  
18 and inserting the following:

19 “(i) in the case of a single-employer plan, an  
20 amount equal to—

21 “(I) for plan years beginning after Decem-  
22 ber 31, 1990, and before January 1, 2006, \$19,  
23 or

1           “(II) for plan years beginning after De-  
2           cember 31, 2005, the amount determined under  
3           subparagraph (F),  
4           plus the additional premium (if any) determined  
5           under subparagraph (E) for each individual who is  
6           a participant in such plan during the plan year;”;  
7           and

8           (2) by adding at the end the following new sub-  
9           paragraph:

10          “(F)(i) Except as otherwise provided in this subpara-  
11          graph, for purposes of determining the annual premium  
12          rate payable to the corporation by a single-employer plan  
13          for basic benefits guaranteed under this title, the amount  
14          determined under this subparagraph is the greater of \$30  
15          or the adjusted amount determined under clause (ii).

16          “(ii) For plan years beginning after 2006, the ad-  
17          justed amount determined under this clause is the product  
18          derived by multiplying \$30 by the ratio of—

19                 “(I) the national average wage index (as de-  
20                 fined in section 209(k)(1) of the Social Security Act)  
21                 for the first of the 2 calendar years preceding the  
22                 calendar year in which the plan year begins, to

23                 “(II) the national average wage index (as so de-  
24                 fined) for 2004,

1 with such product, if not a multiple of \$1, being rounded  
 2 to the next higher multiple of \$1 where such product is  
 3 a multiple of \$0.50 but not of \$1, and to the nearest mul-  
 4 tiple of \$1 in any other case.

5 “(iii) For purposes of determining the annual pre-  
 6 mium rate payable to the corporation by a single-employer  
 7 plan for basic benefits guaranteed under this title for any  
 8 plan year beginning after 2005 and before 2010—

9 “(I) except as provided in subelause (II), the  
 10 premium amount referred to in subparagraph  
 11 (A)(i)(II) for any such plan year is the amount set  
 12 forth in connection with such plan year in the fol-  
 13 lowing table:

<b>“If the plan year begins in:</b>	<b>The amount is:</b>
2006 .....	\$21.20
2007 .....	\$23.40
2008 .....	\$25.60
2009 .....	\$27.80; or

14 “(II) if the plan’s funding target attainment  
 15 percentage for the plan year preceding the current  
 16 plan year was less than 80 percent, the premium  
 17 amount referred to in subparagraph (A)(i)(II) for  
 18 such current plan year is the amount set forth in  
 19 connection with such current plan year in the fol-  
 20 lowing table:

<b>“If the plan year begins in:</b>	<b>The amount is:</b>
2006 .....	\$22.67
2007 .....	\$26.33
2008 or 2009 .....	the amount provided under clause (i).

1       “(iv) For purposes of this subparagraph, the term  
2 ‘funding target attainment percentage’ has the meaning  
3 provided such term in section 303(d)(2).”.

4       (b) RISK-BASED PREMIUMS.—

5               (1) CONFORMING AMENDMENTS RELATED TO  
6 FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—

7       Section 4006(a)(3)(E) of such Act (as amended by  
8 paragraph (1)) is amended further by striking  
9 clauses (iv) and (v) and inserting the following:

10       “(iv)(I) For purposes of clause (ii), except as pro-  
11 vided in subclause (II), the term ‘unfunded benefits’  
12 means, for a plan year, the amount which would be the  
13 plan’s funding shortfall (as defined in section 303(c)(4)),  
14 if the value of plan assets of the plan were equal to the  
15 fair market value of such assets and determined without  
16 regard to section 303(e)(1), and only vested benefits were  
17 taken into account.

18       “(II) The interest rate used in valuing vested benefits  
19 for purposes of subclause (I) shall be equal to the first,  
20 second, or third segment rate which would be determined  
21 under section 303(f)(2)(C) if section 303(f)(2)(D)(i) were  
22 applied by substituting ‘the yields’ for ‘the 3-year weighted

1 average of yields', as applicable under rules similar to the  
2 rules under section 303(f)(2)(B).”.

3 (2) EFFECTIVE DATE.—The amendments made  
4 by paragraph (1) shall apply with respect to plan  
5 years beginning after 2005.

## 6 **TITLE V—DISCLOSURE**

### 7 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.**

8 (a) APPLICATION OF PLAN FUNDING NOTICE RE-  
9 QUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Sec-  
10 tion 101(f) of the Employee Retirement Income Security  
11 Act of 1974 (29 U.S.C. 1021(f)) is amended—

12 (1) in the heading, by striking “MULTIEM-  
13 PLOYER”;

14 (2) in paragraph (1), by striking “which is a  
15 multiemployer plan”; and

16 (3) by striking paragraph (2)(B)(iii) and insert-  
17 ing the following:

18 “(iii)(I) in the case of a single-em-  
19 ployer plan, a summary of the rules gov-  
20 erning termination of single-employer plans  
21 under subtitle C of title IV, or

22 “(II) in the case of a multiemployer  
23 plan, a summary of the rules governing in-  
24 solvent multiemployer plans, including the  
25 limitations on benefit payments and any

1 potential benefit reductions and suspen-  
2 sions (and the potential effects of such lim-  
3 itations, reductions, and suspensions on  
4 the plan); and”.

5 (b) INCLUSION OF STATEMENT OF THE RATIO OF IN-  
6 ACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Sec-  
7 tion 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B))  
8 is amended—

9 (1) in clause (iii)(II) (added by subsection  
10 (a)(3) of this section), by striking “and” at the end;

11 (2) in clause (iv), by striking “apply.” and in-  
12 serting “apply; and”; and

13 (3) by adding at the end the following new  
14 clause:

15 “(v) a statement of the ratio, as of  
16 the end of the plan year to which the no-  
17 tice relates, of—

18 “(I) the number of participants  
19 who are not in covered service under  
20 the plan and are in pay status under  
21 the plan or have a nonforfeitable right  
22 to benefits under the plan, to

23 “(II) the number of participants  
24 who are in covered service under the  
25 plan.”.

1           (c) COMPARISON OF MONTHLY AVERAGE OF VALUE  
2 OF PLAN ASSETS TO PROJECTED CURRENT LIABIL-  
3 ITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C.  
4 1021(f)(2)(B)) (as amended by the preceding provisions  
5 of this section) is amended further—

6           (1) by striking clause (ii) and inserting the fol-  
7           lowing:

8                           “(ii) a statement of a reasonable esti-  
9                           mate of—

10                                   “(I) the value of the plan’s assets  
11                                   for the plan year to which the notice  
12                                   relates,

13                                   “(II) projected liabilities of the  
14                                   plan for the plan year to which the  
15                                   notice relates, and

16                                   “(III) the ratio of the estimated  
17                                   amount determined under subclause  
18                                   (I) to the estimated amount deter-  
19                                   mined under subclause (II);”;

20           (2) by adding at the end (after and below  
21           clause (v)) the following:

22                           “For purposes of determining a plan’s projected  
23                           liabilities for a plan year under clause (ii)(II),  
24                           such projected liabilities shall be determined by  
25                           projecting forward in a reasonable manner to

1           the end of the plan year the liabilities of the  
2           plan to participants and beneficiaries as of the  
3           first day of the plan year, taking into account  
4           any significant events that occur during the  
5           plan year and that have a material effect on  
6           such liabilities, including any plan amendments  
7           in effect for the plan year.”.

8           (d) STATEMENT OF PLAN’S FUNDING POLICY AND  
9           METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B)  
10          of such Act (as amended by the preceding provisions of  
11          this section) is amended further—

12                 (1) in clause (iv), by striking “and” at the end;

13                 (2) in clause (v), by striking the period and in-  
14                 serting “; and”; and

15                 (3) by inserting after clause (v) the following  
16                 new clause:

17                         “(vi) a statement setting forth the  
18                         funding policy of the plan and the asset al-  
19                         location of investments under the plan (ex-  
20                         pressed as percentages of total assets) as  
21                         of the end of the plan year to which the  
22                         notice relates.”.

23           (e) NOTICE OF FUNDING IMPROVEMENT PLAN OR  
24           REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER  
25           PLAN.—Section 101(f)(2)(B) of such Act (as amended by

1 the preceding provisions of this section) is amended  
2 further—

3 (1) in clause (v), by striking “and” at the end;

4 (2) in clause (vi), by striking the period and in-  
5 serting “; and”; and

6 (3) by inserting after clause (vi) the following  
7 new clause:

8 “(vii) a summary of any funding im-  
9 provement plan, rehabilitation plan, or  
10 modification thereof adopted under section  
11 305 during the plan year to which the no-  
12 tice relates.”.

13 (f) NOTICE DUE 90 DAYS AFTER PLAN’S VALU-  
14 ATION DATE.—Section 101(f)(3) of such Act (29 U.S.C.  
15 1021(f)(3)) is amended by striking “two months after the  
16 deadline (including extensions) for filing the annual report  
17 for the plan year” and inserting “90 days after the end  
18 of the plan year”.

19 (g) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to plan years beginning after De-  
21 cember 31, 2005.

22 **SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.**

23 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-  
24 MENTS.—Section 103 of the Employee Retirement Income  
25 Security Act of 1974 (29 U.S.C. 1023) is amended—

1           (1) in subsection (a)(1)(B), by striking “sub-  
2           sections (d) and (e)” and inserting “subsections (d),  
3           (e), and (f)”; and

4           (2) by adding at the end the following new sub-  
5           section:

6           “(f)(1) With respect to any defined benefit plan, an  
7           annual report under this section for a plan year shall in-  
8           clude the following:

9           “(A) The ratio, as of the end of such plan year,  
10          of—

11           “(i) the number of participants who, as of  
12           the end of such plan year, are not in covered  
13           service under the plan and are in pay status  
14           under the plan or have a nonforfeitable right to  
15           benefits under the plan, to

16           “(ii) the number of participants who are in  
17           covered service under the plan as of the end of  
18           such plan year.

19           “(B) In any case in which any liabilities to par-  
20           ticipants or their beneficiaries under such plan as of  
21           the end of such plan year consist (in whole or in  
22           part) of liabilities to such participants and bene-  
23           ficiaries borne by 2 or more pension plans as of im-  
24           mediately before such plan year, the funded ratio of  
25           each of such 2 or more pension plans as of imme-

1 diately before such plan year and the funded ratio  
2 of the plan with respect to which the annual report  
3 is filed as of the end of such plan year.

4 “(C) For purposes of this paragraph, the term  
5 ‘funded ratio’ means, in connection with a plan, the  
6 percentage which—

7 “(i) the value of the plan’s assets is of

8 “(ii) the liabilities to participants and  
9 beneficiaries under the plan.

10 “(2) With respect to any defined benefit plan which  
11 is a multiemployer plan, an annual report under this sec-  
12 tion for a plan year shall include the following:

13 “(A) The number of employers obligated to con-  
14 tribute to the plan as of the end of such plan year.

15 “(B) The number of participants under the  
16 plan on whose behalf no employer contributions have  
17 been made to the plan for such plan year. For pur-  
18 poses of this subparagraph, the term ‘employer con-  
19 tribution’ means, in connection with a participant, a  
20 contribution made by an employer as an employer of  
21 such participant.”.

22 (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-  
23 ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-  
24 JECTIONS.—Section 103(d) of such Act (29 U.S.C.  
25 1023(d)) is amended—

1           (1) by redesignating paragraphs (12) and (13)  
2           as paragraphs (13) and (14), respectively; and

3           (2) by inserting after paragraph (11) the fol-  
4           lowing new paragraph:

5           “(12) A statement explaining the actuarial as-  
6           sumptions and methods used in projecting future re-  
7           tirements and forms of benefit distributions under  
8           the plan.”.

9           (c) SUMMARY ANNUAL REPORT FILED WITHIN 15  
10          DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-  
11          PORT.—Section 104(b)(3) of such Act (29 U.S.C.  
12          1024(b)(3)) is amended—

13           (1) by striking “Within 210 days after the close  
14           of the fiscal year,” and inserting “Within 15 busi-  
15           ness days after the due date under subsection (a)(1)  
16           for the filing of the annual report for the fiscal year  
17           of the plan”; and

18           (2) by striking “the latest” and inserting  
19           “such”.

20          (d) INFORMATION MADE AVAILABLE TO PARTICI-  
21          PANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT  
22          TO MULTIEMPLOYER PLANS.—

23           (1) IN GENERAL.—Section 101 of the Employee  
24          Retirement Income Security Act of 1974 (29 U.S.C.

1 1021) (as amended by section 103(b)(2)(A)) is fur-  
2 ther amended—

3 (A) by redesignating subsection (k) as sub-  
4 section (l); and

5 (B) by inserting after subsection (j) the  
6 following new subsection:

7 “(k) MULTIEMPLOYER PLAN INFORMATION MADE  
8 AVAILABLE ON REQUEST.—

9 “(1) IN GENERAL.—Each administrator of a  
10 multiemployer plan shall furnish to any plan partici-  
11 pant or beneficiary or any employer having an obli-  
12 gation to contribute to the plan, who so requests in  
13 writing—

14 “(A) a copy of any actuarial report re-  
15 ceived by the plan for any plan year which has  
16 been in receipt by the plan for at least 30 days,  
17 and

18 “(B) a copy of any financial report pre-  
19 pared for the plan by any plan investment man-  
20 ager or advisor or other person who is a plan  
21 fiduciary which has been in receipt by the plan  
22 for at least 30 days.

23 “(2) COMPLIANCE.—Information required to be  
24 provided under paragraph (1) —

1           “(A) shall be provided to the requesting  
2 participant, beneficiary, or employer within 30  
3 days after the request in a form and manner  
4 prescribed in regulations of the Secretary, and

5           “(B) may be provided in written, elec-  
6 tronic, or other appropriate form to the extent  
7 such form is reasonably accessible to persons to  
8 whom the information is required to be pro-  
9 vided.

10          “(3) LIMITATIONS.—In no case shall a partici-  
11 pant, beneficiary, or employer be entitled under this  
12 subsection to receive more than one copy of any re-  
13 port described in paragraph (1) during any one 12-  
14 month period. The administrator may make a rea-  
15 sonable charge to cover copying, mailing, and other  
16 costs of furnishing copies of information pursuant to  
17 paragraph (1). The Secretary may by regulations  
18 prescribe the maximum amount which will constitute  
19 a reasonable charge under the preceding sentence.”.

20          “(2) ENFORCEMENT.—Section 502(c)(4) of such  
21 Act (29 U.S.C. 1132(c)(4)) (as amended by section  
22 103(b)(2)(B)) is further amended by striking “sec-  
23 tions 101(j) and 302(b)(7)(F)(iv)” and inserting  
24 “sections 101(j), 101(k), and 302(b)(7)(F)(iv)”.

1           (3) REGULATIONS.—The Secretary shall pre-  
2       scribe regulations under section 101(k)(2) of the  
3       Employee Retirement Income Security Act of 1974  
4       (added by paragraph (1) of this subsection) not later  
5       than 90 days after the date of the enactment of this  
6       Act.

7       (e) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY  
8       TO MULTIEMPLOYER PLANS.—

9           (1) IN GENERAL.—Section 101 of such Act (as  
10       amended by subsection (d) of this section) is further  
11       amended—

12           (A) by redesignating subsection (l) as sub-  
13       section (m); and

14           (B) by inserting after subsection (k) the  
15       following new subsection:

16       “(l) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-  
17       ITY.—

18           “(1) IN GENERAL.—The plan sponsor or ad-  
19       ministrator of a multiemployer plan shall furnish to  
20       any employer who has an obligation to contribute  
21       under the plan and who so requests in writing notice  
22       of—

23           “(A) the amount which would be the  
24       amount of such employer’s withdrawal liability  
25       under part 1 of subtitle E of title IV if such

1 employer withdrew on the last day of the plan  
2 year preceding the date of the request, and

3 “(B) the average increase, per participant  
4 under the plan, in accrued liabilities under the  
5 plan as of the end of such plan year to partici-  
6 pants under such plan on whose behalf no em-  
7 ployer contributions are payable (or their bene-  
8 ficiaries), which would be attributable to such a  
9 withdrawal by such employer.

10 For purposes of subparagraph (B), the term ‘em-  
11 ployer contribution’ means, in connection with a par-  
12 ticipant, a contribution made by an employer as an  
13 employer of such participant.

14 “(2) COMPLIANCE.—Any notice required to be  
15 provided under paragraph (1)—

16 “(A) shall be provided to the requesting  
17 employer within 180 days after the request in  
18 a form and manner prescribed in regulations of  
19 the Secretary, and

20 “(B) may be provided in written, elec-  
21 tronic, or other appropriate form to the extent  
22 such form is reasonably accessible to employers  
23 to whom the information is required to be pro-  
24 vided.

1           “(3) LIMITATIONS.—In no case shall an em-  
2           ployer be entitled under this subsection to receive  
3           more than one notice described in paragraph (1)  
4           during any one 12-month period. The person re-  
5           quired to provide such notice may make a reasonable  
6           charge to cover copying, mailing, and other costs of  
7           furnishing such notice pursuant to paragraph (1).  
8           The Secretary may by regulations prescribe the max-  
9           imum amount which will constitute a reasonable  
10          charge under the preceding sentence.”.

11          (2) ENFORCEMENT.—Section 502(c)(4) of such  
12          Act (29 U.S.C. 1132(c)(4)) (as amended by para-  
13          graph (1)) is further amended by striking “sections  
14          101(j), 101(k), and 302(b)(7)(F)(iv)” and inserting  
15          “sections 101(j), 101(k), 101(l), and  
16          302(b)(7)(F)(iv)”.

17          (f) EFFECTIVE DATE.—The amendments made by  
18          this section shall apply to plan years beginning after De-  
19          cember 31, 2005.

20          **SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.**

21          (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED  
22          TO PROVIDE INFORMATION TO PBGC.—Paragraph (1) of  
23          section 4010(b) of the Employee Retirement Income Secu-  
24          rity Act of 1974 (29 U.S.C. 1310(b)) is amended to read  
25          as follows:

1           “(1) the aggregate funding target attainment  
2           percentage of the plan (as defined in subsection  
3           (d)(2)) is less than 60 percent;”.

4           (b) NOTICE TO PARTICIPANTS AND BENE-  
5 FICIARIES.—Section 4010 of the Employee Retirement In-  
6 come Security Act of 1974 (29 U.S.C. 1310) is amended  
7 by adding at the end the following new subsection:

8           “(d) NOTICE TO PARTICIPANTS AND BENE-  
9 FICIARIES.—

10           “(1) IN GENERAL.—Not later than 90 days  
11           after the submission by any person to the corpora-  
12           tion of information or documentary material with re-  
13           spect to any plan pursuant to subsection (a), such  
14           person shall provide notice of such submission to  
15           each participant and beneficiary under the plan (and  
16           under all plans maintained by members of the con-  
17           trolled group of each contributing sponsor of the  
18           plan). Such notice shall also set forth—

19           “(A) the number of single-employer plans  
20           covered by this title which are in at-risk status  
21           and are maintained by contributing sponsors of  
22           such plan (and by members of their controlled  
23           groups) with respect to which the funding tar-  
24           get attainment percentage for the preceding  
25           plan year of each plan is less than 60 percent;

1           “(B) the value of the assets of each of the  
2 plans described in subparagraph (A) for the  
3 plan year, the funding target for each of such  
4 plans for the plan year, and the funding target  
5 attainment percentage of each of such plans for  
6 the plan year; and

7           “(C) taking into account all single-em-  
8 ployer plans maintained by the contributing  
9 sponsor and the members of its controlled  
10 group as of the end of such plan year—

11           “(i) the aggregate total of the values  
12 of plan assets of such plans as of the end  
13 of such plan year,

14           “(ii) the aggregate total of the fund-  
15 ing targets of such plans, as of the end of  
16 such plan year, taking into account only  
17 benefits to which participants and bene-  
18 ficiaries have a nonforfeitable right, and

19           “(iii) the aggregate funding targets  
20 attainment percentage with respect to the  
21 contributing sponsor for the preceding plan  
22 year.

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

1           “(A) VALUE OF PLAN ASSETS.—The term  
2           ‘value of plan assets’ means the value of plan  
3           assets, as determined under section 303(e)(3).

4           “(B) FUNDING TARGET.—The term ‘fund-  
5           ing target’ has the meaning provided under sec-  
6           tion 303(d)(1).

7           “(C) FUNDING TARGET ATTAINMENT PER-  
8           CENTAGE.—The term ‘funding target attain-  
9           ment percentage’ has the meaning provided in  
10          section 303(d)(2).

11          “(D) AGGREGATE FUNDING TARGETS AT-  
12          TAINMENT PERCENTAGE.—The term ‘aggregate  
13          funding targets attainment percentage’ with re-  
14          spect to a contributing sponsor for a plan year  
15          is the percentage, taking into account all plans  
16          maintained by the contributing sponsor and the  
17          members of its controlled group as of the end  
18          of such plan year, which

19                 “(i) the aggregate total of the values  
20                 of plan assets, as of the end of such plan  
21                 year, of such plans, is of

22                 “(ii) the aggregate total of the fund-  
23                 ing targets of such plans, as of the end of  
24                 such plan year, taking into account only

1           benefits to which participants and bene-  
2           ficiaries have a nonforfeitable right.

3           “(E) AT-RISK STATUS.—The term ‘at-risk  
4           status’ has the meaning provided in section  
5           303(g)(3).

6           “(3) COMPLIANCE.—

7           “(A) IN GENERAL.—Any notice required to  
8           be provided under paragraph (1) may be pro-  
9           vided in written, electronic, or other appropriate  
10          form to the extent such form is reasonably ac-  
11          cessible to individuals to whom the information  
12          is required to be provided.

13          “(B) LIMITATIONS.—In no case shall a  
14          participant or beneficiary be entitled under this  
15          subsection to receive more than one notice de-  
16          scribed in paragraph (1) during any one 12-  
17          month period. The person required to provide  
18          such notice may make a reasonable charge to  
19          cover copying, mailing, and other costs of fur-  
20          nishing such notice pursuant to paragraph (1).  
21          The corporation may by regulations prescribe  
22          the maximum amount which will constitute a  
23          reasonable charge under the preceding sen-  
24          tence.”.

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

## 4 **TITLE VI—INVESTMENT ADVICE**

### 5 **SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT IN-** 6 **COME SECURITY ACT OF 1974 PROVIDING** 7 **PROHIBITED TRANSACTION EXEMPTION FOR** 8 **PROVISION OF INVESTMENT ADVICE.**

9 (a) EXEMPTION FROM PROHIBITED TRANS-  
10 ACTIONS.—Section 408(b) of the Employee Retirement  
11 Income Security Act of 1974 (29 U.S.C. 1108(b)) is  
12 amended by adding at the end the following new para-  
13 graph:

14 “(14)(A) Any transaction described in subpara-  
15 graph (B) in connection with the provision of invest-  
16 ment advice described in section 3(21)(A)(ii), in any  
17 case in which—

18 “(i) the investment of assets of the plan is  
19 subject to the direction of plan participants or  
20 beneficiaries,

21 “(ii) the advice is provided to the plan or  
22 a participant or beneficiary of the plan by a fi-  
23 duciary adviser in connection with any sale, ac-  
24 quisition, or holding of a security or other prop-

1           erty for purposes of investment of plan assets,  
2           and

3           “(iii) the requirements of subsection (g)  
4           are met in connection with the provision of the  
5           advice.

6           “(B) The transactions described in this sub-  
7           paragraph are the following:

8                   “(i) the provision of the advice to the  
9                   plan, participant, or beneficiary;

10                   “(ii) the sale, acquisition, or holding  
11                   of a security or other property (including  
12                   any lending of money or other extension of  
13                   credit associated with the sale, acquisition,  
14                   or holding of a security or other property)  
15                   pursuant to the advice; and

16                   “(iii) the direct or indirect receipt of  
17                   fees or other compensation by the fiduciary  
18                   adviser or an affiliate thereof (or any em-  
19                   ployee, agent, or registered representative  
20                   of the fiduciary adviser or affiliate) in con-  
21                   nection with the provision of the advice or  
22                   in connection with a sale, acquisition, or  
23                   holding of a security or other property pur-  
24                   suant to the advice.”.

1 (b) REQUIREMENTS.—Section 408 of such Act is  
2 amended further by adding at the end the following new  
3 subsection:

4 “(g) REQUIREMENTS RELATING TO PROVISION OF  
5 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

6 “(1) IN GENERAL.—The requirements of this  
7 subsection are met in connection with the provision  
8 of investment advice referred to in section  
9 3(21)(A)(ii), provided to an employee benefit plan or  
10 a participant or beneficiary of an employee benefit  
11 plan by a fiduciary adviser with respect to the plan  
12 in connection with any sale, acquisition, or holding  
13 of a security or other property for purposes of in-  
14 vestment of amounts held by the plan, if—

15 “(A) in the case of the initial provision of  
16 the advice with regard to the security or other  
17 property by the fiduciary adviser to the plan,  
18 participant, or beneficiary, the fiduciary adviser  
19 provides to the recipient of the advice, at a time  
20 reasonably contemporaneous with the initial  
21 provision of the advice, a written notification  
22 (which may consist of notification by means of  
23 electronic communication)—

24 “(i) of all fees or other compensation  
25 relating to the advice that the fiduciary ad-

1           viser or any affiliate thereof is to receive  
2           (including compensation provided by any  
3           third party) in connection with the provi-  
4           sion of the advice or in connection with the  
5           sale, acquisition, or holding of the security  
6           or other property,

7           “(ii) of any material affiliation or con-  
8           tractual relationship of the fiduciary ad-  
9           viser or affiliates thereof in the security or  
10          other property,

11          “(iii) of any limitation placed on the  
12          scope of the investment advice to be pro-  
13          vided by the fiduciary adviser with respect  
14          to any such sale, acquisition, or holding of  
15          a security or other property,

16          “(iv) of the types of services provided  
17          by the fiduciary adviser in connection with  
18          the provision of investment advice by the  
19          fiduciary adviser,

20          “(v) that the adviser is acting as a fi-  
21          duciary of the plan in connection with the  
22          provision of the advice, and

23          “(vi) that a recipient of the advice  
24          may separately arrange for the provision of  
25          advice by another adviser, that could have

1 no material affiliation with and receive no  
2 fees or other compensation in connection  
3 with the security or other property,

4 “(B) the fiduciary adviser provides appro-  
5 priate disclosure, in connection with the sale,  
6 acquisition, or holding of the security or other  
7 property, in accordance with all applicable secu-  
8 rities laws,

9 “(C) the sale, acquisition, or holding oc-  
10 curs solely at the direction of the recipient of  
11 the advice,

12 “(D) the compensation received by the fi-  
13 duciary adviser and affiliates thereof in connec-  
14 tion with the sale, acquisition, or holding of the  
15 security or other property is reasonable, and

16 “(E) the terms of the sale, acquisition, or  
17 holding of the security or other property are at  
18 least as favorable to the plan as an arm’s  
19 length transaction would be.

20 “(2) STANDARDS FOR PRESENTATION OF IN-  
21 FORMATION.—

22 “(A) IN GENERAL.—The notification re-  
23 quired to be provided to participants and bene-  
24 ficiaries under paragraph (1)(A) shall be writ-  
25 ten in a clear and conspicuous manner and in

1 a manner calculated to be understood by the av-  
2 erage plan participant and shall be sufficiently  
3 accurate and comprehensive to reasonably ap-  
4 prise such participants and beneficiaries of the  
5 information required to be provided in the noti-  
6 fication.

7 “(B) MODEL FORM FOR DISCLOSURE OF  
8 FEES AND OTHER COMPENSATION.—The Sec-  
9 retary shall issue a model form for the disclo-  
10 sure of fees and other compensation required in  
11 paragraph (1)(A)(i) which meets the require-  
12 ments of subparagraph (A).

13 “(3) EXEMPTION CONDITIONED ON MAKING RE-  
14 QUIRED INFORMATION AVAILABLE ANNUALLY, ON  
15 REQUEST, AND IN THE EVENT OF MATERIAL  
16 CHANGE.—The requirements of paragraph (1)(A)  
17 shall be deemed not to have been met in connection  
18 with the initial or any subsequent provision of advice  
19 described in paragraph (1) to the plan, participant,  
20 or beneficiary if, at any time during the provision of  
21 advisory services to the plan, participant, or bene-  
22 ficiary, the fiduciary adviser fails to maintain the in-  
23 formation described in clauses (i) through (iv) of  
24 subparagraph (A) in currently accurate form and in  
25 the manner described in paragraph (2) or fails—

1           “(A) to provide, without charge, such cur-  
2           rently accurate information to the recipient of  
3           the advice no less than annually,

4           “(B) to make such currently accurate in-  
5           formation available, upon request and without  
6           charge, to the recipient of the advice, or

7           “(C) in the event of a material change to  
8           the information described in clauses (i) through  
9           (iv) of paragraph (1)(A), to provide, without  
10          charge, such currently accurate information to  
11          the recipient of the advice at a time reasonably  
12          contemporaneous to the material change in in-  
13          formation.

14          “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE  
15          OF COMPLIANCE.—A fiduciary adviser referred to in  
16          paragraph (1) who has provided advice referred to in  
17          such paragraph shall, for a period of not less than  
18          6 years after the provision of the advice, maintain  
19          any records necessary for determining whether the  
20          requirements of the preceding provisions of this sub-  
21          section and of subsection (b)(14) have been met. A  
22          transaction prohibited under section 406 shall not be  
23          considered to have occurred solely because the  
24          records are lost or destroyed prior to the end of the

1       6-year period due to circumstances beyond the con-  
2       trol of the fiduciary adviser.

3               “(5) EXEMPTION FOR PLAN SPONSOR AND CER-  
4       TAIN OTHER FIDUCIARIES.—

5               “(A) IN GENERAL.—Subject to subpara-  
6       graph (B), a plan sponsor or other person who  
7       is a fiduciary (other than a fiduciary adviser)  
8       shall not be treated as failing to meet the re-  
9       quirements of this part solely by reason of the  
10      provision of investment advice referred to in  
11      section 3(21)(A)(ii) (or solely by reason of con-  
12      tracting for or otherwise arranging for the pro-  
13      vision of the advice), if—

14              “(i) the advice is provided by a fidu-  
15      ciary adviser pursuant to an arrangement  
16      between the plan sponsor or other fidu-  
17      ciary and the fiduciary adviser for the pro-  
18      vision by the fiduciary adviser of invest-  
19      ment advice referred to in such section,

20              “(ii) the terms of the arrangement re-  
21      quire compliance by the fiduciary adviser  
22      with the requirements of this subsection,  
23      and

24              “(iii) the terms of the arrangement  
25      include a written acknowledgment by the

1           fiduciary adviser that the fiduciary adviser  
2           is a fiduciary of the plan with respect to  
3           the provision of the advice.

4           “(B) CONTINUED DUTY OF PRUDENT SE-  
5           LECTION OF ADVISER AND PERIODIC REVIEW.—  
6           Nothing in subparagraph (A) shall be construed  
7           to exempt a plan sponsor or other person who  
8           is a fiduciary from any requirement of this part  
9           for the prudent selection and periodic review of  
10          a fiduciary adviser with whom the plan sponsor  
11          or other person enters into an arrangement for  
12          the provision of advice referred to in section  
13          3(21)(A)(ii). The plan sponsor or other person  
14          who is a fiduciary has no duty under this part  
15          to monitor the specific investment advice given  
16          by the fiduciary adviser to any particular recipi-  
17          ent of the advice.

18          “(C) AVAILABILITY OF PLAN ASSETS FOR  
19          PAYMENT FOR ADVICE.—Nothing in this part  
20          shall be construed to preclude the use of plan  
21          assets to pay for reasonable expenses in pro-  
22          viding investment advice referred to in section  
23          3(21)(A)(ii).

24          “(6) DEFINITIONS.—For purposes of this sub-  
25          section and subsection (b)(14)—

1           “(A) FIDUCIARY ADVISER.—The term ‘fi-  
2           duciary adviser’ means, with respect to a plan,  
3           a person who is a fiduciary of the plan by rea-  
4           son of the provision of investment advice by the  
5           person to the plan or to a participant or bene-  
6           ficiary and who is—

7                   “(i) registered as an investment ad-  
8                   viser under the Investment Advisers Act of  
9                   1940 (15 U.S.C. 80b–1 et seq.) or under  
10                  the laws of the State in which the fiduciary  
11                  maintains its principal office and place of  
12                  business,

13                   “(ii) a bank or similar financial insti-  
14                   tution referred to in section 408(b)(4) or a  
15                   savings association (as defined in section  
16                   3(b)(1) of the Federal Deposit Insurance  
17                   Act (12 U.S.C. 1813(b)(1))), but only if  
18                   the advice is provided through a trust de-  
19                   partment of the bank or similar financial  
20                   institution or savings association which is  
21                   subject to periodic examination and review  
22                   by Federal or State banking authorities,

23                   “(iii) an insurance company qualified  
24                   to do business under the laws of a State,

1           “(iv) a person registered as a broker  
2           or dealer under the Securities Exchange  
3           Act of 1934 (15 U.S.C. 78a et seq.),

4           “(v) an affiliate of a person described  
5           in any of clauses (i) through (iv), or

6           “(vi) an employee, agent, or registered  
7           representative of a person described in any  
8           of clauses (i) through (v) who satisfies the  
9           requirements of applicable insurance,  
10          banking, and securities laws relating to the  
11          provision of the advice.

12          “(B) AFFILIATE.—The term ‘affiliate’ of  
13          another entity means an affiliated person of the  
14          entity (as defined in section 2(a)(3) of the In-  
15          vestment Company Act of 1940 (15 U.S.C.  
16          80a–2(a)(3))).

17          “(C) REGISTERED REPRESENTATIVE.—  
18          The term ‘registered representative’ of another  
19          entity means a person described in section  
20          3(a)(18) of the Securities Exchange Act of  
21          1934 (15 U.S.C. 78c(a)(18)) (substituting the  
22          entity for the broker or dealer referred to in  
23          such section) or a person described in section  
24          202(a)(17) of the Investment Advisers Act of  
25          1940 (15 U.S.C. 80b–2(a)(17)) (substituting

1           the entity for the investment adviser referred to  
2           in such section).”.

3           (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply with respect to advice referred to  
5 in section 3(21)(A)(ii) of the Employee Retirement In-  
6 come Security Act of 1974 provided on or after January  
7 1, 2006.

8   **SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF**  
9                           **1986 PROVIDING PROHIBITED TRANSACTION**  
10                          **EXEMPTION FOR PROVISION OF INVESTMENT**  
11                          **ADVICE.**

12           [*See introduced bill, page 287, line 15 through page*  
13 *298, line 23*]

14                           **TITLE VII—DEDUCTION**  
15                           **LIMITATIONS**

16   **SEC. 701.** [*SEE INTRODUCED BILL, PAGE 299, LINE 1 THROUGH*  
17                           *PAGE 305, LINE 20*].