December 22, 2005

Ordered to be printed as passed

109TH CONGRESS
1ST SESSION

S. 1783

AN ACT

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

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

Sec. 1. Short title and table of contents.

TITLE I—FUNDING AND DEDUCTION RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

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.
Sec. 105. Special rules for multiple employer plans of certain cooperatives.
Sec. 106. Temporary relief for certain rescued plans.

Subtitle B—Amendments to Internal Revenue Code of 1986

Sec. 111. Modifications of the minimum funding standards.
Sec. 112. Funding rules applicable to single-employer pension plans.
Sec. 113. Benefit limitations under single-employer plans.
Sec. 114. Increase in deduction limit for single-employer plans.
Sec. 115. Technical and conforming amendments.

Subtitle C—Interest Rate Assumptions and Deductible Amounts for 2006

Sec. 121. Extension of replacement of 30-year Treasury rates.
Sec. 122. Deduction limits for plan contributions.
Sec. 123. Updating deduction rules for combination of plans.

TITLE II—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 201. Funding rules for multiemployer defined benefit plans.
Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.
Sec. 203. Measures to forestall insolvency of multiemployer plans.
Sec. 204. Special rule for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation.
Sec. 205. Withdrawal liability reforms.

PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

Sec. 211. Funding rules for multiemployer defined benefit plans.
Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status.

PART III—SUNSET OF FUNDING RULES

Sec. 216. Sunset of funding rules.

Subtitle B—Deduction and Related Provisions

Sec. 221. Deduction limits for multiemployer plans.
Sec. 222. Transfer of excess pension assets to multiemployer health plan.

TITLE III—INTEREST RATE ASSUMPTIONS

Sec. 301. Interest rate assumption for determination of lump sum distributions.
Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.
Sec. 303. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.
Sec. 304. Modification of pension funding requirements for plans subject to current transition rule.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec. 401. Increases in PBGC premiums.
Sec. 402. Authority to enter alternative funding agreements to prevent plan terminations.
Sec. 403. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
Sec. 404. Limitation on PBGC guarantee of shutdown and other benefits.
Sec. 405. Rules relating to bankruptcy of employer.
Sec. 406. PBGC premiums for new plans of small employers.
Sec. 407. PBGC premiums for small and new plans.
Sec. 408. Authorization for PBGC to pay interest on premium overpayment refunds.
Sec. 409. Rules for substantial owner benefits in terminated plans.
Sec. 410. Acceleration of PBGC computation of benefits attributable to recoveries from employers.
Sec. 411. Treatment of certain plans where cessation or change in membership of a controlled group.
Sec. 412. Effect of title.
Sec. 413. Wage requirement for employers.

TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notice.
Sec. 502. Access to multiemployer pension plan information.
Sec. 503. Additional annual reporting requirements.
Sec. 504. Timing of annual reporting requirements.
Sec. 505. Section 4010 filings with the PBGC.
Sec. 506. Disclosure of termination information to plan participants.
Sec. 507. Benefit suspension notice.
Sec. 508. Study and report by Government Accountability Office.

TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PENSION PLANS

Sec. 601. Prospective application of age discrimination, conversion, and present value assumption rules.
Sec. 602. Regulations relating to mergers and acquisitions.

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

Sec. 701. Defined contribution plans required to provide employees with freedom to invest their plan assets.
Sec. 702. Notice of freedom to divest employer securities or real property.
Sec. 703. Periodic pension benefit statements.
Sec. 704. Notice to participants or beneficiaries of blackout periods.
Sec. 705. Allowance of, and credit for, additional IRA payments in certain bankruptcy cases.
Sec. 706. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.
Sec. 707. Increase in maximum bond amount.

TITLE VIII—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

Sec. 801. Defined contribution plans required to provide adequate investment education to participants.
Sec. 802. Independent investment advice provided to plan participants.
Sec. 803. Treatment of qualified retirement planning services.
Sec. 804. Increase in penalties for coercive interference with exercise of ERISA rights.
Sec. 805. Administrative provision.

TITLE IX—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

Sec. 901. Regulations on time and order of issuance of domestic relations orders.
Sec. 902. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
Sec. 903. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.
Sec. 904. Requirement for additional survivor annuity option.

TITLE X—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

Sec. 1001. Clarifications regarding purchase of permissive service credit.
Sec. 1002. Allow rollover of after-tax amounts in annuity contracts.
Sec. 1003. Clarification of minimum distribution rules for governmental plans.
Sec. 1004. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
Sec. 1005. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
Sec. 1006. Faster vesting of employer nonelective contributions.
Sec. 1007. Allow direct rollovers from retirement plans to Roth IRAS.
Sec. 1008. Elimination of higher penalty on certain simple plan distributions.
Sec. 1009. Simple plan portability.
Sec. 1010. Eligibility for participation in retirement plans.
Sec. 1011. Transfers to the PBGC.
Sec. 1012. Missing participants.
Sec. 1013. Modifications of rules governing hardships and unforseen financial emergencies.

TITLE XI—ADMINISTRATIVE PROVISIONS

Sec. 1101. Employee plans compliance resolution system.
Sec. 1102. Notice and consent period regarding distributions.

Sec. 1103. Reporting simplification.
Sec. 1104. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
Sec. 1105. No reduction in unemployment compensation as a result of pension rollovers.
Sec. 1106. Withholding on distributions from governmental section 457 plans.
Sec. 1107. Treatment of defined benefit plan as governmental plan.
Sec. 1108. Increasing participation in cash or deferred plans through automatic contribution arrangements.
Sec. 1109. Treatment of investment of assets by plan where participant fails to exercise investment election.
Sec. 1110. Clarification of fiduciary rules.

TITLE XII—UNITED STATES TAX COURT MODERNIZATION

Sec. 1200. Amendment of 1986 Code.
Sec. 1201. Annuities for survivors of Tax Court judges who are assassinated.
Sec. 1202. Cost-of-living adjustments for Tax Court judicial survivor annuities.
Sec. 1203. Life insurance coverage for Tax Court judges.
Sec. 1204. Cost of life insurance coverage for Tax Court judges age 65 or over.
Sec. 1205. Modification of timing of lump-sum payment of judges' accrued annual leave.
Sec. 1206. Participation of Tax Court judges in the Thrift Savings Plan.
Sec. 1207. Exemption of teaching compensation of retired judges from limitation on outside earned income.
Sec. 1208. General provisions relating to Magistrate Judges of the Tax Court.
Sec. 1209. Annuities to surviving spouses and dependent children of Magistrate Judges of the Tax Court.
Sec. 1210. Retirement and annuity program.
Sec. 1211. Incumbent Magistrate Judges of the Tax Court.
Sec. 1212. Provisions for recall.
Sec. 1213. Effective date.

TITLE XIII—OTHER PROVISIONS

Subtitle A—Administrative Provision

Sec. 1301. Provisions relating to plan amendments.
Sec. 1302. Authority to the Secretary of Labor, Secretary of the Treasury, and the Pension Benefit Guaranty Corporation to postpone certain deadlines.

Subtitle B—Governmental Pension Plan Equalization

Sec. 1311. Definition of governmental plan.
Sec. 1312. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local plans.
Sec. 1313. Clarification that Tribal governments are subject to the same defined benefit plan rules and regulations applied to State and other local governments, their police and firefighters.
Sec. 1314. Effective date.

Subtitle C—Miscellaneous Provisions

Sec. 1321. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.
Sec. 1322. Treatment of death benefits from corporate-owned life insurance.

Subtitle D—Other Related Pension Provisions

Part I—Health and Medical Benefits

Sec. 1331. Use of excess pension assets for future retiree health benefits.
Sec. 1332. Special rules for funding of collectively bargained retiree health benefits.
Sec. 1333. Allowance of reserve for medical benefits of plans sponsored by bona fide associations.

Part II—Cash or Deferred Arrangements

Sec. 1336. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.
Sec. 1337. State and local governments eligible to maintain section 401(k) plans.

Part III—Excess Contributions

Sec. 1339. Excess contributions.

Part IV—Other Provisions

Sec. 1341. Amendments relating to prohibited transactions.
Sec. 1342. Federal Task Force on Older Workers.
Sec. 1343. Technical corrections to Saver Act.

TITLE I—FUNDING AND DEDUCTION RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

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

SEC. 101. MINIMUM FUNDING STANDARDS.

(a) Repeal of Existing Funding Rules.—Sections 302 through 308 of the Employee Retirement In-

come Security Act of 1974 (29 U.S.C. 1082 through 1086) are repealed.

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

"MINIMUM FUNDING STANDARDS

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

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

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

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

"(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for

the plan year which are required under the terms of the plan, and

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

"(b) LIABILITY FOR CONTRIBUTIONS.—

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

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

"(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

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

"(A) IN GENERAL.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(A) SECURITY MAY BE REQUIRED.—

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

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

"(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with re-

spect to a plan described in subparagraph (A)(i)—

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

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

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

"(ii) consider—

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

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

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

"(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

"(I) the aggregate unpaid minimum required contributions for the plan year and all preceding plan years, and

"(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 303(e)(2),

is less than $1,000,000.

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

"(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

"(I) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 303 for the plan year which is not paid on or before the due date (as determined under section 303(j)(1)) for the plan year.

"(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 303 for the plan year.

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

"(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan,

no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

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

"(i) with respect to such employer, and

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

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account

of such member would not significantly affect the determination under this paragraph.

"(6) ADVANCE NOTICE.—

"(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21)) other than the Pension Benefit Guaranty Corporation and in the case of a multiemployer plan, to each employer required to contribute to the plan under subsection (b)(1). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

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

"(7) RESTRICTION ON PLAN AMENDMENTS.—

"(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan

by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

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

"(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

"(ii) only repeals an amendment described in subsection (d)(2), or

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

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

"(d) MISCELLANEOUS RULES.—

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

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

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

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

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

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

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

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the items relating to sections 302 through 308 and inserting the following new item:

"Sec. 302. Minimum funding standards.".

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

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

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

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

"SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 302(a)(2)(A), except as provided in subsection (f), the term 'minimum required contribution' means, with respect to any plan year of a defined benefit plan which is a single employer plan—

"(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is less than the funding target of the plan for the plan year, the sum of—

"(A) the target normal cost of the plan for the plan year,

"(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

"(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e); or

"(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by any such excess.

"(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

"(c) SHORTFALL AMORTIZATION CHARGE.—

"(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

"(2) SHORTFALL AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

"(A) DETERMINATION.—The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

"(B) SHORTFALL INSTALLMENT.—The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

"(C) SEGMENT RATES.—In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the

segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

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

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

"(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

"(4) FUNDING SHORTFALL.—

"(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph

(B), the funding shortfall of a plan for any plan year is the excess (if any) of—

"(i) the funding target of the plan for the plan year, over

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

"(B) TRANSITION RULE FOR AMORTIZATION OF FUNDING SHORTFALL.—

"(i) IN GENERAL.—Solely for purposes of applying paragraph (3) in the case of plan years beginning after 2006 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year.

"(ii) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

"(I) IN GENERAL.—Except as provided in subclause (II), the applicable percentage shall be 93 percent for plan years beginning in 2007, 96 percent for plan years beginning in

2008, and 100 percent for any succeeding plan year.

"(II) SMALL PLANS.—In the case of a plan described in subsection (g)(2)(B), the applicable percentage shall be determined in accordance with the following table:

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

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

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

"(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is

the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

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

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

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

"(e) WAIVER AMORTIZATION CHARGE.—

"(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

"(2) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

"(A) DETERMINATION.—The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual install-

ments over a period of 5 plan years beginning with the succeeding plan year.

"(B) WAIVER INSTALLMENT.—The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

"(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

"(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 302(c).

"(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization bases for all preceding plan years (and all waiver amortization in-

stallments with respect to such bases) shall be reduced to zero.

"(f) USE OF PREFUNDING BALANCES TO SATISFY MINIMUM REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—A plan sponsor may credit any amount of a plan's prefunding balance for a plan year against the minimum required contribution for the plan year and the amount of the contributions an employer is required to make under section 302(b) for the plan year shall be reduced by the amount so credited. Any such amount shall be credited on the first day of the plan year.

"(2) PREFUNDING BALANCE.—

"(A) BEGINNING BALANCE.—The beginning balance of a prefunding balance maintained by a plan shall be zero, except that if a plan was in effect for a plan year beginning in 2006 and had a positive balance in the funding standard account under section 302(b) (as in effect for such plan year) as of the end of such plan year, the beginning balance for the plan for its first plan year beginning after 2006 shall be such positive balance.

"(B) INCREASES.—

"(i) IN GENERAL.—As of the first day of each plan year beginning after 2007, the prefunding balance of a plan shall be increased by the excess (if any) of—

"(I) the aggregate amount of employer contributions to the plan for the preceding plan year, over

"(II) the minimum required contribution for the preceding plan year.

"(ii) ADJUSTMENTS FOR INTEREST.—Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

"(iii) CERTAIN CONTRIBUTIONS DISREGARDED.—Any contribution which is required to be made under section 206(g) in addition to any contribution required

under this section shall not be taken into account for purposes of clause (i).

"(C) DECREASES.—As of the first day of each plan year after 2007, the prefunding balance of a plan shall be decreased (but not below zero) by the amount of the balance credited under paragraph (1) against the minimum required contribution of the plan for the preceding plan year.

"(D) ADJUSTMENTS FOR INVESTMENT EXPERIENCE.—In determining the prefunding balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary of the Treasury, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

"(3) LIMITATION FOR UNDERFUNDED PLANS.—

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

"(i) the value of plan assets for the preceding plan year, bears to

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

is less than 80 percent, the preceding provisions of this subsection shall not apply unless employers liable for contributions to the plan under section 302(b) make contributions to the plan for the plan year in an aggregate amount not less than the amount determined under subparagraph (B). Any contribution required by this subparagraph may not be reduced by any credit otherwise allowable under paragraph (1).

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

"(i) the target normal cost of the plan for the plan year, or

"(ii) 25 percent of the minimum required contribution under subsection (a) for the plan year without regard to this subsection.

"(4) REDUCTION IN VALUE OF ASSETS.—Solely for purposes of applying subsections (a) and

(c)(4)(A)(ii) in determining the minimum required contribution under this section, the value of the plan assets otherwise determined without regard to this paragraph shall be reduced by the amount of the prefunding balance under this subsection.

"(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

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

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

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

"(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than

multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

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

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

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

"(3) DETERMINATION OF VALUE OF PLAN ASSETS.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

"(B) AVERAGING ALLOWED.—A plan may determine the value of plan assets on the basis of any reasonable actuarial method of valuation providing for the averaging of fair market values, but only if such method—

"(i) is permitted under regulations prescribed by the Secretary of the Treasury, and

"(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 12th month preceding the valuation date and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month).

"(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of determining the value of assets under paragraph (3)—

"(A) PRIOR YEAR CONTRIBUTIONS.—If—

"(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

"(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2007, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

"(B) SPECIAL RULE FOR CURRENT YEAR CONTRIBUTIONS MADE BEFORE VALUATION DATE.—If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

"(i) such contributions, and

"(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

"(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

"(2) INTEREST RATES.—

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

"(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining

the present value of the benefits of the plan shall be—

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

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

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

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

"(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month

on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

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

"(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which

is based on bonds maturing during periods beginning after the period described in clause (ii).

"(D) CORPORATE BOND YIELD CURVE.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects the average, for the 12-month period ending with the month preceding such month, of yields on investment grade corporate bonds with varying maturities.

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

"(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each

month the corporate bond yield curve for such month and each of the rates determined under this paragraph for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

"(G) TRANSITION RULE.—

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

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

"(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multi-

plied by a percentage equal to 100 percent minus the applicable percentage.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

"(3) MORTALITY TABLES.—

"(A) IN GENERAL.—Except as provided in subparagraphs (C) and (D), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Security and Transparency Act of 2005 and as revised from time to time under subparagraph (B).

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

"(C) SUBSTITUTE MORTALITY TABLE.—

"(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary of the Treasury, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section during the 10-consecutive plan year period specified in the request. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of clause (ii).

"(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary of the Treasury determines that—

"(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II),

"(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience,

"(III) except as provided by the Secretary, such table will be used by all plans maintained by the plan sponsor and all members of any controlled group which includes the plan sponsor, and

"(IV) such table is significantly different from the table described in subparagraph (A).

"(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary of the Treasury for approval under this subparagraph shall be treated as in effect for the first plan year in the 10-year period described in clause (i) unless the Secretary of the Treasury, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements

of clause (ii). The 180-day period shall be extended for any period during which the Secretary of the Treasury has requested information from the plan sponsor and such information has not been provided.

"(D) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding subparagraph (A)—

"(i) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary of the Treasury shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

"(ii) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with re-

spect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

"(iii) PERIODIC REVISION.—The Secretary of the Treasury shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

"(E) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in present value resulting from any differences in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year.

"(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present

value or making any computation under this section, there shall be taken into account—

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

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

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

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

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

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

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

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

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

"(A) IN GENERAL.—In the case of a plan to which this subsection applies for a plan year,

the funding target of the plan for the plan year is equal to the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B).

"(B) ADDITIONAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions described in this subparagraph are as follows:

"(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 7 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk target liability and at-risk target normal cost are being determined.

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

"(2) TARGET NORMAL COST OF AT-RISK PLANS.—In the case of a plan to which this subsection applies for a plan year, the target normal cost of the plan for such plan year shall be equal to the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B).

"(3) MINIMUM AMOUNT.—In no event shall—

"(A) the at-risk target liability be less than the target liability, as determined without regard to this subsection, or

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

"(4) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in at-risk status for a plan year if—

"(A) the plan is maintained by a financially-weak employer, and

"(B) the funding target attainment percentage for the plan year is less than 93 percent.

"(5) FINANCIALLY-WEAK EMPLOYER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'financially-weak employer' means any employer if—

"(i) as of the valuation date for each of the years during a period of at least 3 consecutive plan years ending with the plan year—

"(I) the employer has an outstanding senior unsecured debt instrument which is rated lower than investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

"(II) if no such debt instrument has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer lower than investment grade, and

"(ii) at least 2 of the years during such period are deterioration years.

If an employer is treated as a financially-weak employer for any plan year, clause (ii) shall not apply in determining whether the employer is so treated for any succeeding plan year in any continuous period of plan years for which the employer is treated as a financially-weak employer.

"(B) CONTROLLED GROUP EXCEPTION.—If an employer treated as a financially-weak employer under subparagraph (A) is a member of a controlled group (as defined in section 302(d)(3)), the employer shall not be treated as a financially-weak employer if a significant member (as determined under regulations prescribed by the Secretary of the Treasury) of such group has an outstanding senior unsecured debt instrument that is rated as being investment grade by an organization described in subparagraph (A).

"(C) EMPLOYERS WITH NO RATINGS.—If—

"(i) an employer has no debt instrument described in subparagraph (A)(i) which was rated by an organization described in such subparagraph, and

"(ii) no such organization has made an issuer credit rating for such employer, then such employer shall only be treated as a financially-weak employer to the extent provided in regulations prescribed by the Secretary of the Treasury.

"(6) DETERMINATION OF DETERIORATION YEAR.—For purposes of paragraph (5), the term 'deterioration year' means any year during the period described in paragraph (5)(A)(i) for which the rating described in subclause (I) or (II) of paragraph (5)(A)(i) by each organization is either—

"(A) lower than the lowest rating of the employer by such organization for a preceding year in such period, or

"(B) the lowest rating used by such organization.

"(7) YEARS BEFORE EFFECTIVE DATE.—For purposes of paragraphs (5) and (6), plan years beginning before 2007 shall not be taken into account.

"(8) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

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

has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

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

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

"(B) IMPROVEMENT YEARS NOT TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—An improvement year shall not be taken into account in determining any consecutive period of plan years for purposes of subparagraph (A).

"(ii) APPLICATION OF SUBSECTION AFTER IMPROVEMENT YEAR ENDS.—Plan years immediately before and after an improvement year (or consecutive period of

improvement years) shall be treated as consecutive for purposes of subparagraph (A).

"(iii) IMPROVEMENT YEAR.—For purposes of this subparagraph, the term 'improvement year' means any plan year for which any rating described in subclause (I) or (II) of paragraph (5)(A)(i) is higher than such rating for the preceding plan year.

"(C) TRANSITION PERCENTAGE.—For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

"If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1	20
2	40
3	60
4	80.

"(D) YEARS BEFORE EFFECTIVE DATE.—For purposes of this paragraph, plan years beginning before 2007 shall not be taken into account.

"(9) PLANS TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to

any plan to which this section applies and which is in at-risk status for the plan year.

"(B) EXCEPTION FOR SMALL PLANS.—This subsection shall not apply to a plan for a plan year if the plan was described in subsection (g)(2)(B) for the preceding plan year, determined by substituting '500' for '100'.

"(C) EXCEPTION FOR PLANS MAINTAINED BY CERTAIN COOPERATIVES.—This subsection shall not apply to an eligible cooperative plan described in subparagraph (D).

"(D) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of subparagraph (C), a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

"(i) rural cooperatives (as defined in section 401(k)(7)(B) of the Internal Revenue Code of 1986 without regard to clause (iv) thereof), or

"(ii) organizations which are—

"(I) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent

owned by agricultural producers or by cooperatives owned by agricultural producers, or

"(II) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subclause (I).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v).

"(E) EXCEPTION FOR PLANS SECURED BY THIRD PARTIES BOUND BY PBGC AGREEMENTS.—This subsection shall not apply to any plan if—

"(i) a person other than the employer obligated to contribute under the plan is, under the terms of an agreement with the Pension Benefit Guaranty Corporation, liable for any failure of the employer to meet its obligation to pay any minimum required contribution or termination liability with respect to the plan; and

"(ii) such person is not a financially-weak employer under paragraph (5).

"(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

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

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

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

"(A) FAILURE TO TIMELY MAKE REQUIRED INSTALLMENT.—

"(i) IN GENERAL.—In the case of a plan to which this paragraph applies, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest

charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points.

"(ii) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any defined benefit plan to which this section applies other than a plan which—

"(I) is a plan described in subsection (g)(2)(B)), or

"(II) had a funding shortfall of $1,000,000 or less for the preceding plan year.

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

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

"(I) the required installment, over

"(II) the amount (if any) of the installment contributed to or under

the plan on or before the due date for the installment.

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

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

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

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

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

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

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

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

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

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

"(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

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

"(E) FISCAL YEARS AND SHORT YEARS.—

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

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

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

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

amount of such installment required to be paid but for this paragraph).

"(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan which—

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

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

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

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

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

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

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

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

"(ii) BASE AMOUNT.—

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

"(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36

months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

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

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

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

''(II) the sum of the purchases of annuities, payments of single sums,

and such other disbursements as the Secretary of the Treasury shall provide in regulations.

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

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

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

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

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

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

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

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

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan covered under section 4021 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

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

"(4) NOTICE OF FAILURE; LIEN.—

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

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

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

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at

the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

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

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

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

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

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

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

(a) LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

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

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

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

"(A) IN GENERAL.—Except as provided in paragraph (4), no amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage as of the valuation date of the plan for such plan year is—

"(i) less than 80 percent, or

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

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

"(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section

303) for the plan year attributable to the amendment, and

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

"(C) EXCEPTION FOR CERTAIN BENEFIT INCREASES.—Subparagraph (A) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

"(2) LIMITATIONS ON ACCELERATED BENEFIT DISTRIBUTIONS.—

"(A) IN GENERAL.—A defined benefit plan which is a single-employer plan shall provide that, with respect to any plan year—

"(i) if the plan's adjusted funded target liability percentage as of the valuation date for the preceding plan year was less than 60 percent and the preceding plan year is not otherwise in a prohibited pe-

riod, the plan sponsor shall, in addition to any other contribution required under section 303, contribute for the current plan year and each succeeding plan year in the prohibited period with respect to the current plan year the amount (if any) which, when added to the portion of the minimum required contribution for the plan year described in subparagraphs (B) and (C) of section 303(a)(1), is sufficient to result in an adjusted funded target liability percentage for the plan year of 60 percent, and

"(ii) no prohibited payments will be made during a prohibited period.

"(B) PROHIBITED PAYMENT.—For purpose of this subsection—

"(i) IN GENERAL.—The term 'prohibited payment' means—

"(I) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)), to a participant or beneficiary whose annuity starting date (as defined in sec-

tion 205(h)(2)) occurs during a prohibited period,

"(II) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

"(III) any other payment specified by the Secretary of the Treasury by regulations.

"(ii) EXCEPTION FOR CERTAIN PAYMENTS.—In the case of any prohibited period described in subparagraph (C)(i), the term 'prohibited payment' shall not include any payment if the amount of the payment does not exceed the lesser of—

"(I) 50 percent of the amount of the payment which could be made without regard to this subsection, or

"(II) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 205(g)) of the maximum guarantee with respect to the participant under section 4022.

The exception under this clause shall only apply once with respect to any participant, except that, for purposes of this sentence, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 206(d)(3)(K)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under subclause (II) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 206(d)(3)(B)(i)) provides otherwise.

''(C) PROHIBITED PERIOD.—For purposes of subparagraph (A), the term 'prohibited period' means—

''(i) except as provided in subparagraph (D), if a plan sponsor is required to make the contribution for the current plan year under subparagraph (A), the period beginning on the 1st day of the plan year and ending on the last day of the 1st period of 2 consecutive plan years (beginning

on or after such 1st day) for which the plan's adjusted funded target liability percentage was at least 60 percent,

"(ii) any period the plan sponsor is in bankruptcy, or

"(iii) any period during which the plan has a liquidity shortfall (as defined in section 303(j)(4)(E)(i)).

The prohibited period for purposes of clause (ii) shall not include any portion of a plan year (even if the plan sponsor is in bankruptcy during such period) which occurs on or after the date the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the plan's adjusted funded target liability percentage is at least 100 percent.

"(D) SATISFACTION OF REQUIREMENT BEFORE CLOSE OF PLAN YEAR.—If, before the close of the current plan year—

"(i) the plan sponsor makes the contribution required to be made under subparagraph (A), or

"(ii) the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the adjusted funded target li-

ability percentage of the plan is at least 60 percent,

this paragraph shall be applied as if no prohibited period had begun as of the beginning of such year and the plan shall, under rules described by the Secretary of the Treasury, restore any payments not made during the prohibited period in effect before the application of this paragraph.

"(3) LIMITATION ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—

"(A) IN GENERAL.—Except as provided in paragraph (4), a single-employer plan shall provide that all future benefit accruals under the plan shall cease during a severe funding shortfall period, but only to the extent the cessation of such accruals would have been permitted under section 204(g) if the cessation had been implemented by a plan amendment adopted immediately before the severe funding shortfall period.

"(B) SEVERE FUNDING SHORTFALL PERIOD.—For purposes of subparagraph (A), the term 'severe funding shortfall period' means in the case of a plan the adjusted funding target

attainment percentage of which as of the valuation date of the plan for any plan year is less than 60 percent, the period—

"(i) beginning on the 1st day of the succeeding plan year, and

"(ii) ending on the date the plan's enrolled actuary certifies that the plan's adjusted funding target attainment percentage is at least 60 percent, and

"(C) OPPORTUNITY FOR INCREASED FUNDING.—For purposes of subparagraph (B), a plan shall not be treated as described in such subparagraph for a plan year if the plan's enrolled actuary certifies that the plan sponsor has before the end of the plan year contributed (in addition to any minimum required contribution under section 303) the amount sufficient to result in an adjusted funding target attainment percentage as of the valuation date for the plan year of 60 percent.

"(4) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED BENEFITS.—In the case of a plan maintained pursuant to a collective bargaining agreement between employee representatives and the plan sponsor and in effect before the beginning of the first

day on which a limitation would otherwise apply under paragraph (1), (2), or (3)—

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

"(B) the plan sponsor shall contribute (in addition to any minimum required contribution under section 303) the amount sufficient to result in an adjusted funding target attainment percentage (as of the valuation date for the plan year in which any such limitation would otherwise apply) equal to the percentage necessary to prevent the limitation from applying.

"(5) RULES RELATING TO REQUIRED CONTRIBUTIONS.—

"(A) SECURITY MAY BE PROVIDED.—

"(i) IN GENERAL.—For purposes of this subsection, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of clause (ii).

"(ii) FORM OF SECURITY.—The security required under clause (i) shall consist of—

"(I) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of this Act,

"(II) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(III) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

"(iii) ENFORCEMENT.—Any security provided under clause (i) may be perfected and enforced at any time after the earlier of—

"(I) the date on which the plan terminates,

"(II) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the

due date for the payment under section 303(j), or

"(III) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

"(iv) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary of the Treasury may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the funding target attainment percentage.

"(B) PREFUNDING BALANCE MAY NOT BE USED.—No prefunding balance under section 303(f) may be used to satisfy any required contribution under this subsection.

"(C) TREATMENT AS UNPAID MINIMUM REQUIRED CONTRIBUTION.—The amount of any required contribution which a plan sponsor fails to make under paragraph (1) or (3) for any plan year shall be treated as an unpaid min-

imum required contribution for purposes of subsection (j) and (k) of section 303 and for purposes of section 4971 of the Internal Revenue Code of 1986.

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

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

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

percentage of the plan as of the valuation date of the plan for the current plan year.

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

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

"(A) OPERATION OF PLAN AFTER PERIOD.—Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of a period of limitation of payment or accrual of benefits under paragraph (2) or (3).

"(B) TREATMENT OF AFFECTED BENEFITS.—Nothing in this paragraph shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this subsection.

"(9) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'funding target attainment percentage' has the same meaning given such term by section 303(d)(2).

"(B) ADJUSTED FUNDED TARGET LIABILITY PERCENTAGE.—The term 'adjusted funded target liability percentage' means the funded target liability percentage which is determined under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 303(d)(2) by the aggregate amount of purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall prescribe in regulations, which were made by the plan during the preceding 2 plan years.

"(10) YEARS BEFORE EFFECTIVE DATE.—No plan year beginning before 2007 shall be taken into account in determining whether this subsection applies to any plan year beginning after 2006.".

(2) NOTICE REQUIREMENT.—

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

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

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

"(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days—

"(1) after the plan has become subject to the restriction described in section 206(g)(2),

"(2) in the case of a plan to which section 206(g)(3) applies, after—

"(A) the date in the plan year described in section 206(g)(3)(B) on which the plan's enrolled actuary certifies that the plan's adjusted funding target attainment percentage for the plan year is less than 60 percent (or, if earlier, the date such percentage is deemed to be less than 60 percent under section 206(g)(7)), and

"(B) the first day of the severe funding shortfall period, and

"(3) at such other time as may be determined by the Secretary of the Treasury.

The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.''.

(B) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking ''section 302(b)(7)(F)(iv)'' and inserting ''sections 101(j) and 302(b)(7)(F)(iv)''.

(b) EFFECTIVE DATES.—

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

(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2007, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to

after the date of the enactment of this Act), or

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

(B) January 1, 2010.

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

SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

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

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

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

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

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

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

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

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

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

(7) in section 204(i)(3), by striking "funded current liability percentage (within the meaning of section 302(d)(8) of this Act)" and inserting "funding target attainment percentage (as defined in section 303(d)(2))";

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

(9) in section 206(e)(1), by striking ''section 302(d)'' and inserting ''section 303(j)(4)'', and by striking ''section 302(e)(5)'' and inserting ''section 303(j)(4)(E)(i)'';

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

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

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

(1) in section 4001(a)(13) (29 U.S.C. 1301(a)(13)), by striking ''302(c)(11)(A)'' and inserting ''302(b)(1)'', by striking ''412(c)(11)(A)'' and inserting ''412(c)(1)'', by striking ''302(c)(11)(B)'' and inserting ''302(b)(2)'', and by striking ''412(c)(11)(B)'' and inserting ''412(c)(2)'';

(2) in section 4003(e)(1) (29 U.S.C. 1303(e)(1)), by striking ''302(f)(1)(A) and (B)'' and inserting ''303(k)(1)(A) and (B)'', and by striking ''412(n)(1)(A) and (B)'' and inserting ''430(k)(1)(A) and (B)'';

(3) in section 4010(b)(2) (29 U.S.C. 1310(b)(2)), by striking "302(f)(1)(A) and (B)" and inserting "303(k)(1)(A) and (B)", and by striking "412(n)(1)(A) and (B)" and inserting "430(k)(1)(A) and (B)";

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

"(1)(A) in the case of a single-employer plan, the sum of the shortfall amortization charge (within the meaning of section 303(c)(1) of this Act and 430(d)(1) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 303(c)(2) of this Act and section 430(d)(2) of such Code (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 302(c) of this Act and section 412(d) of such Code which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for

the plan year in which the termination date occurs or for any previous plan year), or

"(B) in the case of a multiemployer plan, the outstanding balance of the accumulated funding deficiencies (within the meaning of section 304(a)(2) of this Act and section 431(a) of the Internal Revenue Code of 1986) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 302(c) of this Act or section 412(d) of such Code and for extensions of the amortization period under section 304(d) of this Act or section 431(d) of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

"(2)(A) in the case of a single-employer plan, the sum of the waiver amortization charge (within the meaning of section 303(e)(1) of this Act and 430(e)(2) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year

in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 303(e)(3) of this Act and section 430(e)(3) of such Code, or

"(B) in the case of a multiemployer plan, the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 302(c) of this Act or section 412(d) of such Code (if any), and

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

(5) in section 4071 (29 U.S.C. 1371), by striking "302(f)(4)" and inserting "303(k)(4)";

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

(7) in section 4243(f)(1) (29 U.S.C. 1423(f)(1)), by striking "303(a)" and inserting "302(c)";

(8) in section 4243(f)(2) (29 U.S.C. 1423(f)(2)), by striking "303(c)" and inserting "302(c)(3)"; and

(9) in section 4243(g) (29 U.S.C. 1423(g)), by striking "302(c)(3)" and inserting "304(c)(3)".

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

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

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

SEC. 105. SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES.

(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan for its plan year which includes such date, the amendments made by section 401 of this Act,

this subtitle, and subtitle B shall not apply to plan years beginning before the earlier of—

(1) the first plan year for which the plan ceases to be an eligible cooperative plan, or

(2) January 1, 2017.

(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) and in applying section 4006(a)(3)(E)(iii) of such Act (as in effect before the amendments made by section 401) to an eligible cooperative plan for plan years beginning after December 31, 2006, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv) thereof), or

(2) organizations which are—

(A) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

(B) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act.

SEC. 106. TEMPORARY RELIEF FOR CERTAIN RESCUED PLANS.

(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was a rescued plan as of such date, the amendments made by section 401 of this Act, this subtitle, and subtitle B shall not apply to plan years beginning before January 1, 2014.

(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B), and in applying section 4006(a)(3)(E)(iii) of such Act (as in effect before the amendments made by section 401), to a rescued plan for plan years beginning after December 31, 2006, and before January 1, 2014, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

(c) RESCUED PLAN.—For purposes of this section, the term ''rescued plan'' means a defined benefit plan (other than a multiemployer plan) to which section 302 of such Act and section 412 of such Code apply and—

(1) which was sponsored by an employer which was in bankruptcy, giving rise to a claim by the Pension Benefit Guaranty Corporation of at least $100,000,000, but not greater than $150,000,000, and

(2) the sponsorship of which was assumed by another employer that was not a member of the same controlled group as the bankrupt sponsor and

the claim of the Pension Benefit Guaranty Corporation was settled or withdrawn in connection with the assumption of the sponsorship.

Subtitle B—Amendments to Internal Revenue Code of 1986

SEC. 111. MODIFICATIONS OF THE MINIMUM FUNDING STANDARDS.

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

"SEC. 412. MINIMUM FUNDING STANDARDS.

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

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

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

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

determined under section 430 for the plan for the plan year,

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

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

"(b) PLANS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan under the Employee Retirement Income Security Act of 1974—

"(A) the plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

"(B) the plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

"(2) EXCEPTIONS.—This section shall not apply to—

"(A) any profit-sharing or stock bonus plan,

"(B) any insurance contract plan described in subsection (g)(3),

"(C) any governmental plan (within the meaning of section 414(d)),

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

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

"(F) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of

section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

"(3) CERTAIN TERMINATED MULTIEMPLOYER PLANS.—This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of 1974 applies until the last day of the plan year in which the plan terminates (within the meaning of section 4041A(a)(2) of such Act).

"(c) LIABILITY FOR CONTRIBUTIONS.—

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

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

"(d) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

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

"(A) IN GENERAL.—If—

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

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

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

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

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

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

"(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

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

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

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

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

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

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

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

"(A) SECURITY MAY BE REQUIRED.—

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

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

"(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as

provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

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

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

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

"(ii) consider—

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

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

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safe-

guarding and reporting requirements of section 6103(p).

"(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

"(I) the aggregate unpaid minimum required contributions for the plan year and all preceding plan years, and

"(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),

is less than $1,000,000.

"(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under

this subsection which are pending with respect to such plan were denied.

"(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

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

"(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.

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

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

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

"(i) with respect to such employer, and

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

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary deter-

mines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

"(6) ADVANCE NOTICE.—

"(A) IN GENERAL.—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) other than the Pension Benefit Guaranty Corporation and in the case of a multiemployer plan, to each employer required to contribute to the plan under subsection (b)(1). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

"(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to

whom notice was given under subparagraph (A).

"(7) RESTRICTION ON PLAN AMENDMENTS.—

"(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (e)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

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

"(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

"(ii) only repeals an amendment described in subsection (e)(2), or

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

"(e) MISCELLANEOUS RULES.—For purposes of this section—

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

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

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

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

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

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (d)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (d)(1) (or in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

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

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

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

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

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

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

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

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

"(4) CONTROLLED GROUP.—For purposes of this section and section 430, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 2006.

SEC. 112. FUNDING RULES APPLICABLE TO SINGLE-EMPLOYER PENSION PLANS.

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

"PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATION

"430. Minimum funding standards for single-employer defined benefit plans.
"431. Minimum funding standards for multiemployer plans.

"SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS.

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

"(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is less than the funding target of the plan for the plan year, the sum of—

"(A) the target normal cost of the plan for the plan year,

"(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

"(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e); or

"(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) equals or exceeds the funding target of the plan for

the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by any such excess.

"(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

"(c) SHORTFALL AMORTIZATION CHARGE.—

"(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

"(2) SHORTFALL AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

"(A) DETERMINATION.—The shortfall amortization installments are the amounts nec-

essary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

"(B) SHORTFALL INSTALLMENT.—The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

"(C) SEGMENT RATES.—In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

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

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

"(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

"(4) FUNDING SHORTFALL.—

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

"(i) the funding target of the plan for the plan year, over

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

"(B) TRANSITION RULE FOR AMORTIZATION OF FUNDING SHORTFALL.—

"(i) IN GENERAL.—Solely for purposes of applying paragraph (3) in the case of plan years beginning after 2006 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year.

"(ii) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

"(I) IN GENERAL.—Except as provided in subclause (II), the applicable percentage shall be 93 percent for plan years beginning in 2007, 96 percent for plan years beginning in 2008, and 100 percent for any succeeding plan year.

"(II) SMALL PLANS.—In the case of a plan described in subsection (g)(2)(B), the applicable percentage shall be determined in accordance with the following table:

"In the case of a plan year beginning in calendar year:	**The applicable percentage is—**
2007	92
2008	94
2009	96
2010	98.

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

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

"(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

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

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

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

"(e) WAIVER AMORTIZATION CHARGE.—

"(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

"(2) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (1)—

"(A) DETERMINATION.—The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

"(B) WAIVER INSTALLMENT.—The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

"(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection

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

"(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(d).

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

"(f) USE OF PREFUNDING BALANCES TO SATISFY MINIMUM REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—A plan sponsor may credit any amount of a plan's prefunding balance for a plan year against the minimum required contribution for the plan year and the amount of the contributions an employer is required to make under section 412(c) for the plan year shall be reduced by the amount so credited. Any such amount shall be credited on the first day of the plan year.

1 "(2) PREFUNDING BALANCE.—

2 "(A) BEGINNING BALANCE.—The begin-
3 ning balance of a prefunding balance main-
4 tained by a plan shall be zero, except that if a
5 plan was in effect for a plan year beginning in
6 2006 and had a positive balance in the funding
7 standard account under section 412(b) (as in
8 effect for such plan year) as of the end of such
9 plan year, the beginning balance for the plan
10 for its first plan year beginning after 2006 shall
11 be such positive balance.

12 "(B) INCREASES.—

13 "(i) IN GENERAL.—As of the first day
14 of each plan year beginning after 2007, the
15 prefunding balance of a plan shall be in-
16 creased by the excess (if any) of—

17 "(I) the aggregate amount of em-
18 ployer contributions to the plan for
19 the preceding plan year, over

20 "(II) the minimum required con-
21 tribution for the preceding plan year.

22 "(ii) ADJUSTMENTS FOR INTEREST.—
23 Any excess contributions under clause (i)
24 shall be properly adjusted for interest ac-
25 cruing for the periods between the first

day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

"(iii) CERTAIN CONTRIBUTIONS DISREGARDED.—Any contribution which is required to be made under section 436 in addition to any contribution required under this section shall not be taken into account for purposes of clause (i).

"(C) DECREASES.—As of the first day of each plan year after 2007, the prefunding balance of a plan shall be decreased (but not below zero) by the amount of the balance credited under paragraph (1) against the minimum required contribution of the plan for the preceding plan year.

"(D) ADJUSTMENTS FOR INVESTMENT EXPERIENCE.—In determining the prefunding balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary, adjust

such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

"(3) LIMITATION FOR UNDERFUNDED PLANS.—

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

"(i) the value of plan assets for the preceding plan year, bears to

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

is less than 80 percent, the preceding provisions of this subsection shall not apply unless employers liable for contributions to the plan under section 412(c) make contributions to the plan for the plan year in an aggregate amount not less than the amount determined under subparagraph (B). Any contribution required by this subparagraph may not be reduced by any credit otherwise allowable under paragraph (1).

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

"(i) the target normal cost of the plan for the plan year, or

"(ii) 25 percent of the minimum required contribution under subsection (a) for the plan year without regard to this subsection.

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

"(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

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

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

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

"(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

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

"(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the

1 plan is reasonably expected to have on
2 days during such first plan year.
3 "(ii) PREDECESSORS.—Any reference
4 in subparagraph (B) to an employer shall
5 include a reference to any predecessor of
6 such employer.
7 "(3) DETERMINATION OF VALUE OF PLAN AS-
8 SETS.—For purposes of this section—
9 "(A) IN GENERAL.—Except as provided in
10 subparagraph (B), the value of plan assets shall
11 be the fair market value of the assets.
12 "(B) AVERAGING ALLOWED.—A plan may
13 determine the value of plan assets on the basis
14 of any reasonable actuarial method of valuation
15 providing for the averaging of fair market val-
16 ues, but only if such method—
17 "(i) is permitted under regulations
18 prescribed by the Secretary, and
19 "(ii) does not provide for averaging of
20 such values over more than the period be-
21 ginning on the last day of the 12th month
22 preceding the valuation date and ending on
23 the valuation date (or a similar period in
24 the case of a valuation date which is not
25 the 1st day of a month).

"(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of determining the value of assets under paragraph (3)—

"(A) PRIOR YEAR CONTRIBUTIONS.—If—

"(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

"(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2007, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

"(B) SPECIAL RULE FOR CURRENT YEAR CONTRIBUTIONS MADE BEFORE VALUATION DATE.—If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan

year, the assets of the plan as of the valuation date shall not include—

"(i) such contributions, and

"(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

"(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

"(2) INTEREST RATES.—

"(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the

plan's accrued or earned benefits referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

"(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

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

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

"(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third seg-

ment rate with respect to the applicable month.

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

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

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

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

"(D) CORPORATE BOND YIELD CURVE.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects the average, for the 12-month period ending with the month preceding such month, of yields on investment grade corporate bonds with varying maturities.

"(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election

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

"(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve for such month and each of the rates determined under this paragraph for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

"(G) TRANSITION RULE.—

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

"(I) the product of such rate for such month determined without re-

gard to this subparagraph, multiplied by the applicable percentage, and

"(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

"(3) MORTALITY TABLES.—

"(A) IN GENERAL.—Except as provided in subparagraphs (C) and (D), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Security and Transparency Act of 2005 and as revised from time to time under subparagraph (B).

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

"(C) SUBSTITUTE MORTALITY TABLE.—

"(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section during the 10-consecutive plan year period specified in the request. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of clause (ii).

"(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary determines that—

"(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible

information necessary for purposes of subclause (II),

"(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience,

"(III) except as provided by the Secretary, such table will be used by all plans maintained by the plan sponsor and all members of any controlled group which includes the plan sponsor, and

"(IV) such table is significantly different from the table described in subparagraph (A).

"(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect for the first plan year in the 10-year period described in clause (i) unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the

reasons that such table fails to meet the requirements of clause (ii). The 180-day period shall be extended for any period during which the Secretary has requested information from the plan sponsor and such information has not been provided.

"(D) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding subparagraph (A)—

"(i) IN GENERAL.—The Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

"(ii) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables

under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

"(iii) PERIODIC REVISION.—The Secretary shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

"(E) TRANSITION RULE.—Under regulations of the Secretary, any difference in present value resulting from any differences in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 412(l)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year.

"(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present

value or making any computation under this section, there shall be taken into account—

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

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

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

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

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

"(i) the aggregate unfunded benefits as of the close of the preceding plan year

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

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

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

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

"(A) IN GENERAL.—In the case of a plan to which this subsection applies for a plan year,

the funding target of the plan for the plan year is equal to the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B).

"(B) ADDITIONAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions described in this subparagraph are as follows:

"(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 7 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk target liability and at-risk target normal cost are being determined.

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

"(2) TARGET NORMAL COST OF AT-RISK PLANS.—In the case of a plan to which this subsection applies for a plan year, the target normal cost of the plan for such plan year shall be equal to the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B).

"(3) MINIMUM AMOUNT.—In no event shall—

"(A) the at-risk target liability be less than the target liability, as determined without regard to this subsection, or

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

"(4) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in at-risk status for a plan year if—

"(A) the plan is maintained by a financially-weak employer, and

"(B) the funding target attainment percentage for the plan year is less than 93 percent.

"(5) FINANCIALLY-WEAK EMPLOYER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'financially-weak employer' means any employer if—

"(i) as of the valuation date for each of the years during a period of at least 3 consecutive plan years ending with the plan year—

"(I) the employer has an outstanding senior unsecured debt instrument which is rated lower than investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

"(II) if no such debt instrument has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer lower than investment grade, and

"(ii) at least 2 of the years during such period are deterioration years.

If an employer is treated as a financially-weak employer for any plan year, clause (ii) shall not apply in determining whether the employer is so treated for any succeeding plan year in any continuous period of plan years for which the employer is treated as a financially-weak employer.

"(B) CONTROLLED GROUP EXCEPTION.—If an employer treated as a financially-weak employer under subparagraph (A) is a member of a controlled group (as defined in section 412(e)(4)), the employer shall not be treated as a financially-weak employer if a significant member (as determined under regulations prescribed by the Secretary) of such group has an outstanding senior unsecured debt instrument that is rated as being investment grade by an organization described in subparagraph (A).

"(C) EMPLOYERS WITH NO RATINGS.—If—

"(i) an employer has no debt instrument described in subparagraph (A)(i) which was rated by an organization described in such subparagraph, and

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

"(6) DETERMINATION OF DETERIORATION YEAR.—For purposes of paragraph (5), the term 'deterioration year' means any year during the period described in paragraph (5)(A)(i) for which the rating described in subclause (I) or (II) of paragraph (5)(A)(i) by each organization is either—

"(A) lower than the lowest rating of the employer by such organization for a preceding year in such period, or

"(B) the lowest rating used by such organization.

"(7) YEARS BEFORE EFFECTIVE DATE.—For purposes of paragraphs (5) and (6), plan years beginning before 2007 shall not be taken into account.

"(8) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

"(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period

of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

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

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

"(B) IMPROVEMENT YEARS NOT TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—An improvement year shall not be taken into account in determining any consecutive period of plan years for purposes of subparagraph (A).

"(ii) APPLICATION OF SUBSECTION AFTER IMPROVEMENT YEAR ENDS.—Plan years immediately before and after an improvement year (or consecutive period of improvement years) shall be treated as

consecutive for purposes of subparagraph (A).

"(iii) IMPROVEMENT YEAR.—For purposes of this subparagraph, the term 'improvement year' means any plan year for which any rating described in subclause (I) or (II) of paragraph (5)(A)(i) is higher than such rating for the preceding plan year.

"(C) TRANSITION PERCENTAGE.—For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

"If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1	20
2	40
3	60
4	80.

"(D) YEARS BEFORE EFFECTIVE DATE.—For purposes of this paragraph, plan years beginning before 2007 shall not be taken into account.

"(9) PLANS TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to any plan to which this section applies and which is in at-risk status for the plan year.

"(B) EXCEPTION FOR SMALL PLANS.—This subsection shall not apply to a plan for a plan year if the plan was described in subsection (g)(2)(B) for the preceding plan year, determined by substituting '500' for '100'.

"(C) EXCEPTION FOR PLANS MAINTAINED BY CERTAIN COOPERATIVES.—This subsection shall not apply to an eligible cooperative plan described in subparagraph (D).

"(D) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of subparagraph (C), a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

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

"(ii) organizations which are—

"(I) cooperative organizations described in section 1381(a) which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

"(II) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subclause (I).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act.

"(E) EXCEPTION FOR PLANS SECURED BY THIRD PARTIES BOUND BY PBGC AGREEMENTS.—This subsection shall not apply to any plan if—

"(i) a person other than the employer obligated to contribute under the plan is, under the terms of an agreement with the Pension Benefit Guaranty Corporation, liable for any failure of the employer to meet its obligation to pay any minimum required contribution or termination liability with respect to the plan; and

"(ii) such person is not a financially-weak employer under paragraph (5).

1 "(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
2 TIONS.—
3 "(1) IN GENERAL.—For purposes of this sec-
4 tion, the due date for any payment of any minimum
5 required contribution for any plan year shall be 8½
6 months after the close of the plan year.
7 "(2) INTEREST.—Any payment required under
8 paragraph (1) for a plan year made after the valu-
9 ation date for such plan year shall be increased by
10 interest for the period from the valuation date to the
11 payment date, determined by using the effective rate
12 of interest for the plan for such plan year.
13 "(3) ACCELERATED QUARTERLY CONTRIBUTION
14 SCHEDULE FOR UNDERFUNDED PLANS.—
15 "(A) INTEREST PENALTY FOR FAILURE TO
16 MEET ACCELERATED QUARTERLY PAYMENT
17 SCHEDULE.—A plan shall make the required in-
18 stallments under this paragraph for a plan year
19 if the plan had a funding shortfall for the pre-
20 ceding plan year. If the required installment is
21 not paid in full, then the minimum required
22 contribution for the plan year (as increased
23 under paragraph (2)) shall be further increased
24 by an amount equal to the interest on the
25 amount of the underpayment for the period of

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

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

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

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

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

"(I) the required installment, over

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

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

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

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

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

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

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

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

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

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

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

"(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

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

"(E) FISCAL YEARS AND SHORT YEARS.—

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

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

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

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

"(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan which—

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

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

"(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (3)(A), any portion of an

installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

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

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

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

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

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

"(ii) BASE AMOUNT.—

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

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

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

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

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

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

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

"(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the

month in which the due date for such installment occurs.

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

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

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

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

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

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

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

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

"(4) NOTICE OF FAILURE; LIEN.—

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

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in

paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

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

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

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

"(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to

be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (j).

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

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

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

"Subpart B—Limitations on Benefit Improvements by Single-Employer Plans

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

"SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.

"(a) GENERAL RULE.—For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan shall be treated as meeting the requirements of this section if the plan meets the requirements of subsections (b), (c), and (d).

"(b) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

"(1) IN GENERAL.—Except as provided in this section, no amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits be-

come nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage as of the valuation date of the plan for such plan year is—

"(A) less than 80 percent, or

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

"(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

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

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

"(3) EXCEPTION FOR CERTAIN BENEFIT INCREASES.—Paragraph (1) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a partici-

pant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

"(c) LIMITATIONS ON ACCELERATED BENEFIT DISTRIBUTIONS.—

"(1) IN GENERAL.—The requirements of this subsection are met if the plan provides that, with respect to any plan year—

"(A) if the plan's adjusted funded target liability percentage as of the valuation date for the preceding plan year was less than 60 percent and the preceding plan year is not otherwise in a prohibited period, the plan sponsor shall, in addition to any other contribution required under section 430, contribute for the current plan year and each succeeding plan year in the prohibited period with respect to the current plan year the amount (if any) which, when added to the portion of the minimum required contribution for the plan year described in subparagraphs (B) and (C) of section 430(a)(1), is sufficient to result in an adjusted funded target liability percentage for the plan year of 60 percent, and

1 "(B) no prohibited payments will be made
2 during a prohibited period.
3 "(2) PROHIBITED PAYMENT.—For purpose of
4 this subsection—
5 "(A) IN GENERAL.—The term 'prohibited
6 payment' means—
7 "(i) any payment, in excess of the
8 monthly amount paid under a single life
9 annuity (plus any social security supple-
10 ments described in the last sentence of sec-
11 tion 411(a)(9)), to a participant or bene-
12 ficiary whose annuity starting date (as de-
13 fined in section 417(f)(2)) occurs during a
14 prohibited period,
15 "(ii) any payment for the purchase of
16 an irrevocable commitment from an insurer
17 to pay benefits, and
18 "(iii) any other payment specified by
19 the Secretary by regulations.
20 "(B) EXCEPTION FOR CERTAIN PAY-
21 MENTS.—In the case of any prohibited period
22 described in paragraph (3)(A), the term 'pro-
23 hibited payment' shall not include any payment
24 if the amount of the payment does not exceed
25 the lesser of—

"(i) 50 percent of the amount of the payment which could be made without regard to this subsection, or

"(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under section 4022 of the Employee Retirement Income Security Act of 1974.

The exception under this subparagraph shall only apply once with respect to any participant, except that, for purposes of this sentence, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 414(p)(8)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under clause (ii) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 414(p)(1)(A)) provides otherwise.

"(3) PROHIBITED PERIOD.—For purposes of paragraph (1), the term 'prohibited period' means—

"(A) except as provided in paragraph (4), if a plan sponsor is required to make the contribution for the current plan year under paragraph (1), the period beginning on the 1st day of the plan year and ending on the last day of the 1st period of 2 consecutive plan years (beginning on or after such 1st day) for which the plan's adjusted funded target liability percentage was at least 60 percent,

"(B) any period the plan sponsor is in bankruptcy, or

"(C) any period during which the plan has a liquidity shortfall (as defined in section 430(j)(4)(E)(i)).

The prohibited period for purposes of subparagraph (B) shall not include any portion of a plan year (even if the plan sponsor is in bankruptcy during such period) which occurs on or after the date the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the plan's adjusted funded target liability percentage is at least 100 percent.

"(4) SATISFACTION OF REQUIREMENT BEFORE CLOSE OF PLAN YEAR.—If, before the close of the current plan year—

"(A) the plan sponsor makes the contribution required to be made under paragraph (1), or

"(B) the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the adjusted funded target liability percentage of the plan is at least 60 percent,

this subsection shall be applied as if no prohibited period had begun as of the beginning of such year and the plan shall, under rules described by the Secretary, restore any payments not made during the prohibited period in effect before the application of this paragraph.

"(d) LIMITATION ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—

"(1) IN GENERAL.—Except as provided in subsection (e), a single-employer plan shall provide that all future benefit accruals under the plan shall cease during a severe funding shortfall period, but only to the extent the cessation of such accruals would have been permitted under section 411(d)(6) if the cessation had been implemented by a plan amendment

adopted immediately before the severe funding shortfall period.

"(2) SEVERE FUNDING SHORTFALL PERIOD.—For purposes of paragraph (1), the term 'severe funding shortfall period' means in the case of a plan the adjusted funding target attainment percentage of which as of the valuation date of the plan for any plan year is less than 60 percent, the period—

"(A) beginning on the 1st day of the succeeding plan year, and

"(B) ending on the date the plan's enrolled actuary certifies that the plan's funding target attainment percentage is at least 60 percent.

"(3) OPPORTUNITY FOR INCREASED FUNDING.—For purposes of paragraph (2)(A), a plan shall not be treated as described in such paragraph for a plan year if the plan's enrolled actuary certifies that the plan sponsor has before the end of the plan year contributed (in addition to any minimum required contribution under section 430) the amount sufficient to result in an adjusted funding target attainment percentage as of the valuation date for the plan year of 60 percent.

"(e) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED BENEFITS.—In the case of a plan maintained

pursuant to a collective bargaining agreement between employee representatives and the plan sponsor and in effect before the beginning of the first day on which a limitation would otherwise apply under subsections (b), (c), or (d)—

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

"(2) the plan sponsor shall contribute (in addition to any minimum required contribution under section 430) the amount sufficient to result in a funding target attainment percentage (as of the valuation date for the plan year in which any such limitation would otherwise apply) equal to the percentage necessary to prevent the limitation from applying.

"(f) RULES RELATING TO REQUIRED CONTRIBUTIONS.—

"(1) SECURITY MAY BE PROVIDED.—

"(A) IN GENERAL.—For purposes of this section, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of subparagraph (B) .

"(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—

"(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

"(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

"(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

"(C) ENFORCEMENT.—Any security provided under subparagraph (A) may be perfected and enforced at any time after the earlier of—

"(i) the date on which the plan terminates,

"(ii) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j), or

"(iii) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

"(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the funding target attainment percentage.

"(2) PREFUNDING BALANCE MAY NOT BE USED.—No prefunding balance under section 430(f) may be used to satisfy any required contribution under this section.

"(3) TREATMENT AS UNPAID MINIMUM REQUIRED CONTRIBUTION.—The amount of any required contribution which a plan sponsor fails to make under subsection (b) or (d) for any plan year shall be treated as an unpaid minimum required contribution for purposes of subsection (j) and (k) of section 430 and for purposes of section 4971.

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

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

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

"(2) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the

first day of the 10th month of the current plan year, for purposes of subsections (b), (c), and (d), the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month.

"(i) TREATMENT OF PLAN AS OF CLOSE OF PROHIBITED OR CESSATION PERIOD.—For purposes of applying this part—

"(1) OPERATION OF PLAN AFTER PERIOD.—Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of a period of limitation of payment or accrual of benefits under subsection (c) or (d).

"(2) TREATMENT OF AFFECTED BENEFITS.—Nothing in this subsection shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this section.

"(j) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this section—

"(1) IN GENERAL.—The term 'funding target attainment percentage' has the same meaning given such term by section 430(d)(2).

"(2) ADJUSTED FUNDED TARGET LIABILITY PERCENTAGE.—The term 'adjusted funded target liability percentage' means the funded target liability

percentage which is determined under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall prescribe in regulations, which were made by the plan during the preceding 2 plan years.

''(k) SPECIAL RULES.—

''(1) BANKRUPTCY.—In the case of a plan sponsor during any period the plan is in bankruptcy—

''(A) subsection (b) shall be applied by substituting '100 percent' for '80 percent' each place it appears,

''(B) any exception under subsection (b) for any benefit increases pursuant to a collective bargaining agreement shall not apply, and

''(C) the exception under subsection (f) shall not apply for purposes of subsection (b).

''(2) YEARS BEFORE EFFECTIVE DATE.—No plan year beginning before 2007 shall be taken into account in determining whether this section applies to any plan year beginning after 2006.''.

(b) EFFECTIVE DATES.—

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

(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2007, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) the later of—

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

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

(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the

plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 114. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan'' after ''section 501(a),'', and

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

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

''(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of—

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

"(B) the sum of the minimum required contributions under section 430 for such plan years.

"(2) DETERMINATION OF AMOUNT.—

"(A) IN GENERAL.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

"(i) the sum of—

"(I) the funding target for the plan year,

"(II) the target normal cost for the plan year, and

"(III) the cushion amount for the plan year, over

"(ii) the value (determined under section 430(g)(2)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

"(B) SPECIAL RULE FOR CERTAIN EMPLOYERS.—If section 430(i) does not apply to a plan for a plan year, the amount determined

under subparagraph (A)(i) for the plan year shall in no event be less than the sum of—

"(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

"(ii) the target normal cost for the plan year (as so determined).

"(3) CUSHION AMOUNT.—For purposes of paragraph (2)(A)(i)(III)—

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

"(i) 80 percent of the funding target for the plan year, and

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

"(I) increases in compensation which are expected to occur in succeeding plan years, or

"(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in bene-

fits over the 6 immediately preceding plan years).

"(B) LIMITATIONS.—

"(i) IN GENERAL.—In making the computation under subparagraph (A)(ii), the plan's actuary shall assume that the limitations under subsection (l) and section 415(b) shall apply.

"(ii) EXPECTED INCREASES.—In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, the plan's actuary may, notwithstanding subsection (j) or (l), take into account increases in the limitations which are expected to occur in succeeding plan years.

"(4) SPECIAL RULES FOR PLANS WITH 100 OR FEWER PARTICIPANTS.—

"(A) IN GENERAL.—For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan

amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

"(B) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(f)(4))) shall be treated as one plan, but only participants of such member or employer shall be taken into account.

"(5) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

"(6) ACTUARIAL ASSUMPTIONS.—Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430.

"(7) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.".

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

"(iv) GUARANTEED PLANS.—In applying this paragraph, any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

(A) by striking "In the case of a plan" and inserting "In the case of a multiemployer plan",

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

(C) by striking ''section 412(c)(7)(B)'' and inserting ''section 431(c)(6)(A)(ii)'',

(D) by striking ''section 412(c)(7)(A)'' and inserting ''section 431(c)(6)(A)(i)'', and

(E) by striking ''section 412'' and inserting ''section 431''.

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

(A) by adding at the end of subparagraph (A) the following new sentence: ''In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the plan's funding shortfall determined under section 430.'', and

(B) by striking subparagraph (D) and inserting:

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

(4) Section 404A(g)(3)(A) of such Code is amended by striking ''paragraphs (3) and (7) of section 412(c)'' and inserting ''paragraphs (3) and (6) of section 431(c)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS RELATED TO QUALIFICATION REQUIREMENTS.—

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

"(29) BENEFIT LIMITATIONS ON PLANS IN AT-RISK STATUS.—In the case of a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.".

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

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

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

(3) Section 401(a), as amended by this Act, is amended by striking paragraph (33) and by redesig-

nating paragraphs (34) and (35) as paragraph (33) and (34).

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

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

(2) in subsection (b)(1)(F)—

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

(B) by striking "paragraphs (4), (5), and (6) of section 412(i)" and inserting "subparagraphs (D), (E), and (F) of section 412(e)(3)", and

(3) by striking "section 412(c)(8)" in subsection (d)(6)(A) and inserting "section 412(e)(2)".

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

"(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the funding shortfall and target normal cost determined under sec-

tion 430 in the case of any other plan), over''.

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

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

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

''(A) the lesser of—

''(i) the fair market value of the plan's assets (reduced by the prefunding balance determined under section 430(f)), or

''(ii) the value of plan assets as determined under section 430(g)(3) after reduction under section 430(f), over

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

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

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

(e) EXCISE TAXES.—

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

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

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

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

"(b) ADDITIONAL TAX.—If—

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

"(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accu-

mulated funding deficiency is not corrected within the taxable period,

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

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

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

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

''(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

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

''(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a

first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.''.

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

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

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

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

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

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

(1) by striking ''the accumulated funding deficiency (as defined in section 412(a))'' in paragraph (2) and inserting ''the minimum required contribu-

tion determined under section 430, or the accumulated funding deficiency determined under section 431,'', and

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

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

Subtitle C—Interest Rate Assumptions and Deductible Amounts for 2006

SEC. 121. EXTENSION OF REPLACEMENT OF 30-YEAR TREASURY RATES.

(a) AMENDMENTS OF ERISA.—

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

(A) by striking ''2006'' and inserting ''2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

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

(A) by striking "or 2005" and inserting ", 2005, or 2006", and

(B) by striking "AND 2005" in the heading and inserting ", 2005, AND 2006".

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

(b) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) DETERMINATION OF RANGE.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(A) by striking "2006" and inserting "2007", and

(B) by striking "AND 2005" in the heading and inserting ", 2005, AND 2006".

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

(A) by striking "or 2005" and inserting ", 2005, or 2006", and

(B) by striking "AND 2005" in the heading and inserting ", 2005, AND 2006".

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

SEC. 122. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.

(a) IN GENERAL.—Clause (i) of section 404(a)(1)(D) of the Internal Revenue Code of 1986 (relating to special rule in case of certain plans) is amended by striking ''section 412(l)'' and inserting ''section 412(l)(8)(A), except that section 412(l)(8)(A) shall be applied for purposes of this clause by substituting '180 percent (130 percent in the case of a multiemployer plan) of current liability' for 'the current liability' in clause (i).''

(b) CONFORMING AMENDMENT.—Section 404(a)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (F).

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

SEC. 123. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.

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

> ''(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such

contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

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

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

TITLE II—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

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

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

"MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

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

"(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which

this part applies to the plan) over the total credits to such account for such years, and

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

"(b) FUNDING STANDARD ACCOUNT.—

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

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

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

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

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

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

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

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

"(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

"(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under

the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

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

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

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

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

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

"(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions

used under the plan, over a period of 15 plan years,

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

"(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

"(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 302(b) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization

described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

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

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

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

"(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the

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

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

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

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

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

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

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

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

"(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E

of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

"(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

"(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 of the Internal Revenue Code of 1986 in such manner as is determined by the Secretary of the Treasury.

"(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

"(c) ADDITIONAL RULES.—

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

"(2) VALUATION OF ASSETS.—

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

under regulations prescribed by the Secretary of the Treasury.

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

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

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

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

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

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

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

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

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

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

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

"(6) FULL-FUNDING LIMITATION.—

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

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

"(ii) the lesser of—

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

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

"(B) MINIMUM AMOUNT.—

"(i) IN GENERAL.—In no event shall the full-funding limitation determined

under subparagraph (A) be less than the excess (if any) of—

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

"(II) the value of the plan's assets determined under paragraph (2).

"(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

"(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

"(D) CURRENT LIABILITY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

"(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

"(iv) MORTALITY TABLES.—

"(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to

which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

"(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available inde-

pendent studies of mortality of individuals covered by pension plans.

"(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

"(I) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

"(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to in-

dividuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

"(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

"(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

"(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

"(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

"(7) ANNUAL VALUATION.—

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

"(B) VALUATION DATE.—

"(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to

which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

"(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

"(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For

purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

"(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

"(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

"(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

"(i) submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

"(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary of the Treasury shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

"(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

"(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

"(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

"(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

"(iv) the notice required under paragraph (3)(A) has been provided.

"(2) ADDITIONAL EXTENSION.—

"(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may ex-

tend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

"(B) DETERMINATION.—The Secretary make grant an extension under subparagraph (A) if the Secretary determines that—

"(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

"(ii) the failure to permit such extension would—

"(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

"(II) be adverse to the interests of plan participants in the aggregate.

"(C) ACTION BY SECRETARY.—The Secretary of the Treasury shall act upon any application for an extension under this paragraph

within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

"(3) ADVANCE NOTICE.—

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

"(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).".

(b) SHORTFALL FUNDING METHOD.—

(1) IN GENERAL.—A multiemployer plan meeting the criteria of paragraph (2) may adopt, use, or cease using, the shortfall funding method and such adoption, use, or cessation of use of such method, shall be deemed approved by the Secretary of the Treasury under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(e)(1) of the Internal Revenue Code of 1986.

(2) CRITERIA.—A multiemployer pension plan meets the criteria of this clause if—

(A) the plan has not used the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method under paragraph (1); and

(B) the plan is not operating under an amortization period extension under section 304(d) of such Act and did not operate under such an extension during such 5-year period.

(3) SHORTFALL FUNDING METHOD DEFINED.—For purposes of this subsection, the term ''shortfall funding method'' means the shortfall funding method described in Treasury Regulations section 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

(4) BENEFIT RESTRICTIONS TO APPLY.—The benefit restrictions under section 302(c)(7) of such

Act and section 412(d)(7) of such Code shall apply during any period a multiemployer plan is on the shortfall funding method pursuant to this subsection.

(5) USE OF SHORTFALL METHOD NOT TO PRECLUDE OTHER OPTIONS.—Nothing in this subsection shall be construed to affect a multiemployer plan's ability to adopt the shortfall funding method with the Secretary's permission under otherwise applicable regulations or to affect a multiemployer plan's right to change funding methods, with or without the Secretary's consent, as provided in applicable rules and regulations.

(c) CONFORMING AMENDMENTS.—

(1) Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).

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

"Sec. 304. Minimum funding standards for multiemployer plans.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended by inserting after section 304 the following new section:

"ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

"SEC. 305. (a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

"(1) if the plan is in endangered status—

"(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

"(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

"(2) if the plan is in critical status—

"(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

"(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

"(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

"(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

"(A) the plan's funded percentage for such plan year is less than 80 percent, or

"(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

"(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

"(A) A plan is described in this subparagraph if—

"(i) the funded percentage of the plan is less than 65 percent, and

"(ii) the sum of—

"(I) the market value of plan assets, plus

"(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan

years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 5 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if—

''(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 304(d), or

''(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 304(d).

"(C) A plan is described in this subparagraph if—

"(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

"(II) the present value of the reasonably anticipated employer contributions for the current plan year,

"(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

"(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

"(D) A plan is described in this subparagraph if the sum of—

"(i) the market value of plan assets, plus

"(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

"(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

"(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury—

"(i) whether or not the plan is in endangered status for such plan year and

1 whether or not the plan is in critical status
2 for such plan year, and
3 "(ii) in the case of a plan which is in
4 a funding improvement or rehabilitation
5 period, whether or not the plan is making
6 the scheduled progress in meeting the re-
7 quirements of its funding improvement or
8 rehabilitation plan.
9 "(B) ACTUARIAL PROJECTIONS OF ASSETS
10 AND LIABILITIES.—
11 "(i) IN GENERAL.—In making the de-
12 terminations and projections under this
13 subsection, the plan actuary shall make
14 projections required for the current and
15 succeeding plan years, using reasonable ac-
16 tuarial estimates, assumptions, and meth-
17 ods, of the current value of the assets of
18 the plan and the present value of all liabil-
19 ities to participants and beneficiaries under
20 the plan for the current plan year as of the
21 beginning of such year. The projected
22 present value of liabilities as of the begin-
23 ning of such year shall be determined
24 based on the actuarial statement required
25 under section 103(d) with respect to the

most recently filed annual report or the actuarial valuation for the preceding plan year.

"(ii) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any actuarial projection of plan assets shall assume—

"(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

"(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

"(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date speci-

fied in subparagraph (A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

"(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary.

"(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

"(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

"(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of en-

1 dangered status under subsection (b)(3)(A),
2 and
3 "(B) within 30 days after the adoption of
4 the funding improvement plan—
5 "(i) in the case of a plan in seriously
6 endangered status, shall provide to the
7 bargaining parties 1 or more schedules
8 showing revised benefit structures, revised
9 contribution structures, or both, which, if
10 adopted, may reasonably be expected to en-
11 able the multiemployer plan to meet the
12 applicable requirements under paragraph
13 (3) in accordance with the funding im-
14 provement plan, including a description of
15 the reductions in future benefit accruals
16 and increases in contributions that the
17 plan sponsor determines are reasonably
18 necessary to meet the applicable require-
19 ments if the plan sponsor assumes that
20 there are no increases in contributions
21 under the plan other than the increases
22 necessary to meet the applicable require-
23 ments after future benefit accruals have
24 been reduced to the maximum extent per-
25 mitted by law, and

"(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

"(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

"(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

"(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will re-

sult in the plan meeting the requirements of this paragraph.

"(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

"(i) such percentage as of the beginning of such period, plus

"(ii) 10 percent of the percentage under clause (i).

"(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

"(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

"(I) such percentage as of the beginning of such period, plus

"(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

"(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

"(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

"(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

"(i) the second anniversary of the date of the adoption of the funding improvement plan, or

"(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75

percent of the active participants in such multiemployer plan.

"(B) COORDINATION WITH CHANGES IN STATUS.—

"(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

"(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

"(C) PLANS IN ENDANGERED STATUS AT END OF PERIOD.—If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

"(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

"(i) The plan's funded percentage as of the close of the funding improvement

period must equal or exceed a percentage which is equal to the sum of—

"(I) such percentage as of the beginning of such period, plus

"(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

"(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

"(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

"(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the require-

ments of paragraph (3)(C)(i) without regard to this paragraph, and

"(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

"(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

"(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104.

"(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

"(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

"(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

"(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

"(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

"(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

"(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

"(i) a reduction in the level of contributions for any participants,

"(ii) a suspension of contributions with respect to any period of service, or

"(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

"(B) no amendment of the plan which increases the liabilities of the plan by reason of

1 any increase in benefits, any change in the ac-
2 crual of benefits, or any change in the rate at
3 which benefits become nonforfeitable under the
4 plan may be adopted unless the amendment is
5 required as a condition of qualification under
6 part I of subchapter D of chapter 1 of the In-
7 ternal Revenue Code of 1986 or to comply with
8 other applicable law, and
9 ''(C) in the case of a plan in seriously en-
10 dangered status, the plan sponsor shall take all
11 reasonable actions which are consistent with the
12 terms of the plan and applicable law and which
13 are expected, based on reasonable assumptions,
14 to achieve—
15 ''(i) an increase in the plan's funded
16 percentage, and
17 ''(ii) postponement of an accumulated
18 funding deficiency for at least 1 additional
19 plan year.
20 Actions under subparagraph (C) include applications
21 for extensions of amortization periods under section
22 304(d), use of the shortfall funding method in mak-
23 ing funding standard account computations, amend-
24 ments to the plan's benefit structure, reductions in
25 future benefit accruals, and other reasonable actions

consistent with the terms of the plan and applicable law.

"(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

"(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

"(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

"(i) a reduction in the level of contributions for any participants,

"(ii) a suspension of contributions with respect to any period of service, or

"(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

"(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improve-

ment plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

"(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

"(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

"(3) FAILURE TO MEET REQUIREMENTS.—

"(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated

as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

"(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

"(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

"(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

"(A) shall adopt a rehabilitation plan not later than 240 days following the required date

for the actuarial certification of critical status under subsection (b)(3)(A), and

"(B) within 30 days after the adoption of the rehabilitation plan—

"(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

"(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be

designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 204(g)) have been reduced to the maximum extent permitted by law.

"(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

"(3) REHABILITATION PLAN.—For purposes of this section—

"(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

"(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (in-

cluding plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

"(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

1 "(B) UPDATES TO REHABILITATION PLAN
2 AND SCHEDULES.—
3 "(i) REHABILITATION PLAN.—The
4 plan sponsor shall annually update the re-
5 habilitation plan and shall file the update
6 with the plan's annual report under section
7 104.
8 "(ii) SCHEDULES.—The plan sponsor
9 may periodically update any schedule of
10 contribution rates provided under this sub-
11 section to reflect the experience of the
12 plan, except that the schedule or schedules
13 described in paragraph (1)(B)(i) shall be
14 updated at least once every 3 years.
15 "(iii) DURATION OF SCHEDULE.—A
16 schedule of contribution rates provided by
17 the plan sponsor and relied upon by bar-
18 gaining parties in negotiating a collective
19 bargaining agreement shall remain in ef-
20 fect for the duration of that collective bar-
21 gaining agreement.
22 "(C) DEFAULT SCHEDULE.—If the collec-
23 tive bargaining agreement providing for con-
24 tributions under a multiemployer plan that was
25 in effect at the time the plan entered critical

status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

''(4) REHABILITATION PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 per-

cent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

"(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to use of the shortfall method or any extension of amortization periods under section 304(d).

"(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

"(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

"(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

"(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

"(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or

average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

"(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

"(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

"(1) COMPLIANCE WITH REHABILITATION PLAN.—

"(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a re-

1 habilitation plan under subsection (e) so as to
2 be inconsistent with the rehabilitation plan.
3 "(B) SPECIAL RULES FOR BENEFIT IN-
4 CREASES.—A plan may not be amended after
5 the date of the adoption of a rehabilitation plan
6 under subsection (e) so as to increase benefits,
7 including future benefit accruals, unless the
8 plan actuary certifies that such increase is paid
9 for out of additional contributions not con-
10 templated by the rehabilitation plan, and, after
11 taking into account the benefit increase, the
12 multiemployer plan still is reasonably expected
13 to emerge from critical status by the end of the
14 rehabilitation period on the schedule con-
15 templated in the rehabilitation plan.
16 "(2) RESTRICTION ON LUMP SUMS AND SIMI-
17 LAR BENEFITS.—
18 "(A) IN GENERAL.—Effective on the date
19 the notice of certification of the plan's critical
20 status for the initial critical year under sub-
21 section (b)(3)(D) is sent, and notwithstanding
22 section 204(g), the plan shall not pay—
23 "(i) any payment, in excess of the
24 monthly amount paid under a single life
25 annuity (plus any social security supple-

ments described in the last sentence of section 204(b)(1)(G)),

"(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

"(iii) any other payment specified by the Secretary of the Treasury by regulations.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 203(e) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

"(3) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

"(4) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the rehabilitation plan adoption period—

"(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

"(i) a reduction in the level of contributions for any participants,

"(ii) a suspension of contributions with respect to any period of service, or

"(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

"(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.

"(5) FAILURE TO MEET REQUIREMENTS.—

"(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan—

"(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

"(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

"(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

1 "(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
2 DECISIONS.—If, within 60 days of the due date for adop-
3 tion of a funding improvement plan under subsection (c)
4 or a rehabilitation plan under subsection (e), the plan
5 sponsor of a plan in endangered status or a plan in critical
6 status has not agreed on a funding improvement plan or
7 rehabilitation plan, then any member of the board or
8 group that constitutes the plan sponsor may require that
9 the plan sponsor enter into an expedited dispute resolution
10 procedure for the development and adoption of a funding
11 improvement plan or rehabilitation plan.

12 "(h) NONBARGAINED PARTICIPATION.—

13 "(1) BOTH BARGAINED AND NONBARGAINED
14 EMPLOYEE-PARTICIPANTS.—In the case of an em-
15 ployer that contributes to a multiemployer plan with
16 respect to both employees who are covered by one or
17 more collective bargaining agreements and to em-
18 ployees who are not so covered, if the plan is in en-
19 dangered status or in critical status, benefits of and
20 contributions for the nonbargained employees, in-
21 cluding surcharges on those contributions, shall be
22 determined as if those nonbargained employees were
23 covered under the first to expire of the employer's
24 collective bargaining agreements in effect when the
25 plan entered endangered or critical status.

"(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

"(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

"(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

"(1) BARGAINING PARTY.—The term 'bargaining party' means—

"(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

"(ii) in the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the association of employers that is the employee settlor of the plan; and

"(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

"(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage equal to a fraction—

"(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

"(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 304(c)(3).

"(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 304(a).

"(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiem-

ployer plan, a participant who is in covered service under the plan.

"(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

"(A) is not in covered service under the plan, and

"(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

"(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

"(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

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

"(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a).

"(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

"(9) PLAN SPONSOR.—In the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).".

(b) CAUSE OF ACTION TO COMPEL ADOPTION OF FUNDING IMPROVEMENT OR REHABILITATION PLAN.—Section 502(a) of the Employee Retirement Income Security Act of 1974 is amended by striking "or" at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting "; or" and by adding at the end the following:

"(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 305, if the plan sponsor has not adopted a funding improvement or rehabilitation plan under subsection (c) or (e) of

that section by the deadline established in that section, by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan.''.

(c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h), and inserting after subsection (f) the following:

''(g) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—No tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This subsection shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan) and shall not apply if an excise tax is required to be imposed under this section by reason of a violation of such section 305.''.

(d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

(1) Section 302(b) of the Employee Retirement Income Security Act of 1974, as amended by this Act , is amended by adding at the end the following new paragraph:

"(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) and complies with such rehabilitation plan (and any modifications of the plan).".

(2) Section 412(c) of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new paragraph:

"(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan).".

(e) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended by inserting after the item relating to section 304 the following new item:

"Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.".

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such bene-

fits would otherwise apply by reason of such amendments.

SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after 2006.

SEC. 204. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION.

In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—

(1) increases benefits, and

(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383),

the amendments made by sections 201, 202, 211, and 212 of this Act shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).

SEC. 205. WITHDRAWAL LIABILITY REFORMS.

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY OF INSOLVENT EMPLOYERS.—

(1) IN GENERAL.—Subsections (b) and (d) of section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) are repealed.

(2) CONFORMING AMENDMENTS.—Subsections (c) and (e) of section 4225 of such Act are redesignated as subsections (b) and (c), respectively.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) WITHDRAWAL LIABILITY CONTINUES IF WORK CONTRACTED OUT.—

(1) IN GENERAL.—Clause (i) of section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended by inserting ''or to an entity or entities owned or controlled by the employer'' after ''to another location''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work transferred on or after the date of the enactment of this Act.

(c) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

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

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

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

PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as added by this Act) is amended by inserting after section 430 the following new section:

"SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.

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

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

this part applies to the plan) over the total credits to such account for such years, and

"(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 of the Employee Retirement Income Security Act of 1974.

"(b) FUNDING STANDARD ACCOUNT.—

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

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

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

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

"(i) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan

arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

"(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

"(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

"(E) the amount necessary to amortize in equal annual installments (until fully amor-

tized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

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

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

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

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

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

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

"(C) the amount of the waived funding deficiency (within the meaning of section 412(d)(3)) for the plan year, and

"(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

"(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment

of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

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

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

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

"(6) INTEREST.—The funding standard account (and items therein) shall be charged or cred-

ited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

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

"(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

"(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in

the funding standard account at the close of such immediately preceding plan year—

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

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

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

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

"(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer

pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

"(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

"(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and

1 section 412 in such manner as is determined by
2 the Secretary.
3 "(G) SHORT-TERM BENEFITS.—To the ex-
4 tent that any plan amendment increases the un-
5 funded past service liability under the plan by
6 reason of an increase in benefits which are pay-
7 able under the terms of the plan for a period
8 that does not exceed 14 years from the effective
9 date of the amendment, paragraph (2)(B)(i)
10 shall be applied separately with respect to such
11 increase in unfunded past service liability by
12 substituting the number of years of the period
13 during which such benefits are payable for '15'.
14 "(c) ADDITIONAL RULES.—
15 "(1) DETERMINATIONS TO BE MADE UNDER
16 FUNDING METHOD.—For purposes of this part, nor-
17 mal costs, accrued liability, past service liabilities,
18 and experience gains and losses shall be determined
19 under the funding method used to determine costs
20 under the plan.
21 "(2) VALUATION OF ASSETS.—
22 "(A) IN GENERAL.—For purposes of this
23 part, the value of the plan's assets shall be de-
24 termined on the basis of any reasonable actu-
25 arial method of valuation which takes into ac-

count fair market value and which is permitted under regulations prescribed by the Secretary.

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

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

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

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

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

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

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

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

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

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

"(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2)

1 and subparagraph (B) of subsection (b)(3)
2 which are required to be amortized shall be con-
3 sidered fully amortized for purposes of such
4 subparagraphs.
5 ''(6) FULL-FUNDING LIMITATION.—
6 ''(A) IN GENERAL.—For purposes of para-
7 graph (5), the term 'full-funding limitation'
8 means the excess (if any) of—
9 ''(i) the accrued liability (including
10 normal cost) under the plan (determined
11 under the entry age normal funding meth-
12 od if such accrued liability cannot be di-
13 rectly calculated under the funding method
14 used for the plan), over
15 ''(ii) the lesser of—
16 ''(I) the fair market value of the
17 plan's assets, or
18 ''(II) the value of such assets de-
19 termined under paragraph (2).
20 ''(B) MINIMUM AMOUNT.—
21 ''(i) IN GENERAL.—In no event shall
22 the full-funding limitation determined
23 under subparagraph (A) be less than the
24 excess (if any) of—

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

"(II) the value of the plan's assets determined under paragraph (2).

"(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

"(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

"(D) CURRENT LIABILITY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For pur-

poses of clause (i), any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

"(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

"(iv) MORTALITY TABLES.—

"(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing com-

missioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

"(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

"(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

"(I) IN GENERAL.—The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine

current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

"(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

"(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by

regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

"(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

"(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

"(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

"(7) ANNUAL VALUATION.—

"(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once

every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

"(B) VALUATION DATE.—

"(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

"(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

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

"(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

"(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

"(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

"(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

"(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

"(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

"(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

"(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

"(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

"(iv) the notice required under paragraph (3)(A) has been provided.

"(2) ADDITIONAL EXTENSION.—

"(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

"(B) DETERMINATION.—The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

"(i) such extension would carry out the purposes of this Act and would provide

adequate protection for participants under the plan and their beneficiaries, and

"(ii) the failure to permit such extension would—

"(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

"(II) be adverse to the interests of plan participants in the aggregate.

"(C) ACTION BY SECRETARY.—The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

"(3) ADVANCE NOTICE.—

"(A) IN GENERAL.—The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the

applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

"(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be

applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as amended by this Act) is amended by inserting after section 431 the following new section:

"SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.

"(a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

"(1) if the plan is in endangered status—

"(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

"(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

"(2) if the plan is in critical status—

"(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

"(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

"(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

"(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

"(A) the plan's funded percentage for such plan year is less than 80 percent, or

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

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

"(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

"(A) A plan is described in this subparagraph if—

"(i) the funded percentage of the plan is less than 65 percent, and

"(ii) the sum of—

"(I) the market value of plan assets, plus

"(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the

5 succeeding plan years (plus administrative expenses for such plan years).

"(B) A plan is described in this subparagraph if—

"(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

"(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

"(C) A plan is described in this subparagraph if—

"(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

"(II) the present value of the reasonably anticipated employer contributions for the current plan year,

"(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

"(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

"(D) A plan is described in this subparagraph if the sum of—

"(i) the market value of plan assets, plus

"(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is main-

tained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

"(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

"(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary—

"(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year, and

"(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

"(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

1 "(i) IN GENERAL.—In making the de-
2 terminations and projections under this
3 subsection, the plan actuary shall make
4 projections required for the current and
5 succeeding plan years, using reasonable ac-
6 tuarial estimates, assumptions, and meth-
7 ods, of the current value of the assets of
8 the plan and the present value of all liabil-
9 ities to participants and beneficiaries under
10 the plan for the current plan year as of the
11 beginning of such year. The projected
12 present value of liabilities as of the begin-
13 ning of such year shall be determined
14 based on the actuarial statement required
15 under section 103(d) of the Employee Re-
16 tirement Income Security Act of 1974 with
17 respect to the most recently filed annual
18 report or the actuarial valuation for the
19 preceding plan year.
20 "(ii) DETERMINATIONS OF FUTURE
21 CONTRIBUTIONS.—Any actuarial projection
22 of plan assets shall assume—
23 "(I) reasonably anticipated em-
24 ployer contributions for the current
25 and succeeding plan years, assuming

that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

"(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

"(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4) of such Act.

"(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A),

the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary, and the Secretary of Labor.

"(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

"(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

"(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

"(B) within 30 days after the adoption of the funding improvement plan—

"(i) in the case of a plan in seriously endangered status, shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised

contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, including a description of the reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to meet the applicable requirements if the plan sponsor assumes that there are no increases in contributions under the plan other than the increases necessary to meet the applicable requirements after future benefit accruals have been reduced to the maximum extent permitted by law, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

"(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

"(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

"(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will result in the plan meeting the requirements of this paragraph.

"(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

"(i) such percentage as of the beginning of such period, plus

"(ii) 10 percent of the percentage determined under clause (i).

"(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

"(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

"(I) such percentage as of the beginning of such period, plus

"(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

"(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

"(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

"(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

"(i) the second anniversary of the date of the adoption of the funding improvement plan, or

"(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

"(B) COORDINATION WITH CHANGES IN STATUS.—

"(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and

is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

"(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

"(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

"(i) The plan's funded percentage as of the close of the funding improvement period must equal or exceed a percentage which is equal to the sum of—

"(I) such percentage as of the beginning of such period, plus

"(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

"(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

"(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

"(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the

plan is not projected to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, and

"(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

"(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

"(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

"(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

"(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

"(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for pur-

poses of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

"(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

"(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

"(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

"(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

"(i) a reduction in the level of contributions for any participants,

"(ii) a suspension of contributions with respect to any period of service, or

"(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

"(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law, and

"(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

"(i) an increase in the plan's funded percentage, and

"(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section

431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

"(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

"(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

"(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

"(i) a reduction in the level of contributions for any participants,

"(ii) a suspension of contributions with respect to any period of service, or

"(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

"(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

"(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

"(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

"(3) FAILURE TO MEET REQUIREMENTS.—

"(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

"(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

"(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

"(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

"(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

"(B) within 30 days after the adoption of the rehabilitation plan—

"(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

"(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from crit-

ical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

"(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

"(3) REHABILITATION PLAN.—For purposes of this section—

"(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

"(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

"(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If

clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

"(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

"(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

"(ii) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

"(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bar-

gaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

"(C) DEFAULT SCHEDULE.—If the collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

"(4) REHABILITATION PERIOD.—For purposes of this section—

"(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

"(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

"(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

"(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to

use of the shortfall method or any extension of amortization periods under section 431(d).

"(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

"(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

"(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

"(A) a monthly benefit (payable as a single life annuity commencing at the participant's

normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

"(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

"(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining

parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

"(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

"(1) COMPLIANCE WITH REHABILITATION PLAN.—

"(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

"(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

"(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

"(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

"(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(b)(1)(A)),

"(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

"(iii) any other payment specified by the Secretary by regulations.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

1 "(3) ADJUSTMENTS DISREGARDED IN WITH-
2 DRAWAL LIABILITY DETERMINATION.—Any benefit
3 reductions under this subsection shall be disregarded
4 in determining a plan's unfunded vested benefits for
5 purposes of determining an employer's withdrawal li-
6 ability under section 4201 of the Employee Retire-
7 ment Income Security Act of 1974.
8 "(4) SPECIAL RULES FOR PLAN ADOPTION PE-
9 RIOD.—During the rehabilitation plan adoption
10 period—
11 "(A) the plan sponsor may not accept a
12 collective bargaining agreement or participation
13 agreement with respect to the multiemployer
14 plan that provides for—
15 "(i) a reduction in the level of con-
16 tributions for any participants,
17 "(ii) a suspension of contributions
18 with respect to any period of service, or
19 "(iii) any new direct or indirect exclu-
20 sion of younger or newly hired employees
21 from plan participation, and
22 "(B) no amendment of the plan which in-
23 creases the liabilities of the plan by reason of
24 any increase in benefits, any change in the ac-
25 crual of benefits, or any change in the rate at

which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

''(5) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan—

''(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

''(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

"(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by section 4971 to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

"(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

"(h) NONBARGAINED PARTICIPATION.—

"(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and to em-

ployees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

"(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

"(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

1 "(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
2 poses of this section—
3 "(1) BARGAINING PARTY.—The term 'bar-
4 gaining party' means—
5 "(A)(i) except as provided in clause (ii), an
6 employer who has an obligation to contribute
7 under the plan; or
8 "(ii) in the case of a plan described under
9 section 404(c), or a continuation of such a plan,
10 the association of employers that is the em-
11 ployee settlor of the plan; and
12 "(B) an employee organization which, for
13 purposes of collective bargaining, represents
14 plan participants employed by an employer who
15 has an obligation to contribute under the plan.
16 "(2) FUNDED PERCENTAGE.—The term 'fund-
17 ed percentage' means the percentage equal to a
18 fraction—
19 "(A) the numerator of which is the value
20 of the plan's assets, as determined under sec-
21 tion 431(c)(2), and
22 "(B) the denominator of which is the ac-
23 crued liability of the plan, determined using ac-
24 tuarial assumptions described in section
25 431(c)(3).

"(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 412(a).

"(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

"(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

"(A) is not in covered service under the plan, and

"(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

"(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

"(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

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

"(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

"(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

"(9) PLAN SPONSOR.—In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1)."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.

PART III—SUNSET OF FUNDING RULES

SEC. 216. SUNSET OF FUNDING RULES.

(a) REPORT.—Not later than December 31, 2011, the Secretary of Labor, the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation shall conduct a study of the effect of the amendments made by this subtitle on the operation and funding status of multiemployer plans and shall report the results of such study, including any recommendations for legislation, to the Congress.

1 (b) MATTERS INCLUDED IN STUDY.—The study re-
2 quired under subsection (a) shall include—
3 (1) the effect of funding difficulties, funding
4 rules in effect before the date of the enactment of
5 this Act, and the amendments made by this subtitle
6 on small businesses participating in multiemployer
7 plans,
8 (2) the effect on the financial status of small
9 employers of—
10 (A) funding targets set in funding im-
11 provement and rehabilitation plans and associ-
12 ated contribution increases,
13 (B) funding deficiencies,
14 (C) excise taxes,
15 (D) withdrawal liability,
16 (E) the possibility of alternatives schedules
17 and procedures for financially-troubled employ-
18 ers, and
19 (F) other aspects of the multiemployer sys-
20 tem, and
21 (3) the role of the multiemployer pension plan
22 system in helping small employers to offer pension
23 benefits.
24 (c) SUNSET.—

(1) IN GENERAL.—Except as provided in this subsection, notwithstanding any other provision of this Act, the provisions of, and the amendments made by, this subtitle shall not apply to plan years beginning after December 31, 2014, and the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 shall be applied to such plan years under the provisions of sections 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(2) FUNDING IMPROVEMENT AND REHABILITATION PLANS.—If a plan is operating under a funding improvement or rehabilitation plan under section 305 of such Act or 432 of such Code for its last year beginning before January 1, 2015, such plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, such funding improvement or rehabilitation plan is in effect and all provisions of such Act or Code relating to the operation of such funding improvement or rehabilitation plan shall continue in effect during such period.

(3) AMORTIZATION SCHEDULES.—In the case of any amount amortized under section 304(b) of

such Act or 431 of such Code (as in effect after the amendments made by this subtitle) over any period beginning with a plan year beginning before January 1, 2015, such amount shall, in lieu of the amortization which would apply after the application of this subsection, continue to be amortized under such section 304 or 431 (as so in effect).

Subtitle B—Deduction and Related Provisions

SEC. 221. DEDUCTION LIMITS FOR MULTIEMPLOYER PLANS.

(a) INCREASE IN DEDUCTION.—Section 404(a)(1)(D) of the Internal Revenue Code of 1986, as amended by this Act, is amended to read as follows:

"(D) AMOUNT DETERMINED ON BASIS OF UNFUNDED CURRENT LIABILITY.—

"(i) IN GENERAL.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability of the plan.

"(ii) UNFUNDED CURRENT LIABILITY.—For purposes of clause (i), the term

'unfunded current liability' means the excess (if any) of—

"(I) 140 percent of the current liability of the plan determined under section 431(c)(6)(C), over

"(II) the value of the plan's assets determined under section 431(c)(2).".

(b) EXCEPTION FROM LIMITATION ON DEDUCTION WHERE COMBINATION OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 404(a)(7)(C) of such Code, as amended by this Act, is amended by adding at the end the following new clause:

"(v) MULTIEMPLOYER PLANS.—In applying this paragraph, any multiemployer plan shall not be taken into account.".

(2) CONFORMING AMENDMENT.—Section 404(a)(7)(A) of such Code is amended by striking the last sentence.

(c) EFFECTIVE DATES.—

(1) DEDUCTION LIMIT.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2006.

(2) EXCEPTION.—The amendments made by subsection (b) shall apply to years beginning after December 31, 2005.

SEC. 222. TRANSFER OF EXCESS PENSION ASSETS TO MULTIEMPLOYER HEALTH PLAN.

(a) IN GENERAL.—Section 420(e) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(5) APPLICATION TO MULTIEMPLOYER PLAN.—In the case of any plan to which section 404(c) applies (or any successor plan primarily covering employees in the building and construction industry)—

"(A) the prohibition under subsection (a) on the application of this section to a multiemployer plan shall not apply, and

"(B) this section shall be applied to any such plan—

"(i) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

"(ii) in accordance with such modifications of this section (and the provisions

of this title and the Employee Retirement Income Security Act of 1974 relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.''

(b) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(3) Section 408(b)(13) of such Act (29 U.S.C. 1108(b)(13)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers made in taxable years beginning after December 31, 2004.

TITLE III—INTEREST RATE ASSUMPTIONS

SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 205(g)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)(A)) is amended by adding at the end the following new sentence: ''In the case of plan years beginning after 2006, the preceding sentence shall be applied by using the applicable yield curve method under subparagraph (C) rather than the applicable interest rate.''.

(2) APPLICABLE YIELD CURVE METHOD.—Section 205(g)(3) of such Act (29 U.S.C. 1055(g)(3)) is amended by adding at the end the following new subparagraphs:

''(C) APPLICABLE YIELD CURVE METHOD.—For purposes of subparagraph (A), the term 'applicable yield curve method' means—

''(i) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, and 2009, and

''(ii) the yield curve method for years beginning after 2009.

"(D) YIELD CURVE METHOD.—For purposes of this paragraph—

"(i) IN GENERAL.—The yield curve method is a method under which present value is determined—

"(I) by using interest rates drawn from a yield curve which is prescribed by the Secretary of the Treasury and which reflects the yield on high-quality corporate bonds with varying maturities, and

"(II) by matching the timing of the expected benefit payments under the plan to the interest rates on such yield curve.

"(ii) PUBLICATION.—Each month the Secretary of the Treasury shall publish any yield curve prescribed under this subparagraph which shall apply to plan years beginning in such month and such yield curve shall be based on average interest rates for business days occurring during the 3 preceding months.

"(E) PHASE-IN YIELD CURVE METHOD.—

"(i) IN GENERAL.—Present value determined under the phase-in yield curve method shall be equal to the sum of—

"(I) the applicable percentage of such amount determined under the yield curve method described in subparagraph (D), and

"(II) the product of such amount determined by using the applicable interest rate and a percentage equal to 100 percent minus the applicable percentage.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 25 percent for plan years beginning in 2007, 50 percent for plan years beginning in 2008, and 75 percent for plan years beginning in 2009.".

(b) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 417(e)(3)(A) of the Internal Revenue Code of 1986 (relating to determination of present value) is amended by adding at the end the following new sentence: "In the case of plan years beginning after 2006, the preceding sentence shall be applied by using the applicable yield

curve method under subparagraph (C) rather than the applicable interest rate.''

(2) APPLICABLE YIELD CURVE METHOD.—Section 417(e) of such Code is amended by adding at the end the following new subparagraphs:

''(C) APPLICABLE YIELD CURVE METHOD.—For purposes of subparagraph (A), the term 'applicable yield curve method' means—

''(i) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, and 2009, and

''(ii) the yield curve method for years beginning after 2009.

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

''(i) IN GENERAL.—The yield curve method is a method under which present value is determined—

''(I) by using interest rates drawn from a yield curve which is prescribed by the Secretary and which reflects the yield on high-quality corporate bonds with varying maturities, and

"(II) by matching the timing of the expected benefit payments under the plan to the interest rates on such yield curve.

"(ii) PUBLICATION.—Each month the Secretary shall publish any yield curve prescribed under this subparagraph which shall apply to plan years beginning in such month and such yield curve shall be based on average interest rates for business days occurring during the 3 preceding months.

"(E) PHASE-IN YIELD CURVE METHOD.—

"(i) IN GENERAL.—Present value determined under the phase-in yield curve method shall be equal to the sum of—

"(I) the applicable percentage of such amount determined under the yield curve method described in subparagraph (D), and

"(II) the product of such amount determined by using the applicable interest rate and a percentage equal to 100 percent minus the applicable percentage.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 25 percent for plan years beginning in 2007, 50 percent for plan years beginning in 2008, and 75 percent for plan years beginning in 2009.".

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

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

SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.

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

"(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section

417(e)(3), clause (i) shall be applied by substituting '5.5 percent' for '5 percent'.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2005.

SEC. 303. RESTRICTIONS ON FUNDING OF NONQUALIFIED DEFERRED COMPENSATION PLANS BY EMPLOYERS MAINTAINING UNDERFUNDED OR TERMINATED SINGLE-EMPLOYER PLANS.

(a) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Part 3 of subtitle A of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081 et seq.), as amended by this Act, is amended by adding at the end the following new section:

''NOTICE OF FUNDING OF NONQUALIFIED DEFERRED COMPENSATION PLANS

''SEC. 306. (a) NOTICE AND ACCESS.—

''(1) NOTICE RELATING TO RESTRICTED PERIOD.—The plan administrator of a defined benefit plan which is a single-employer plan shall notify each plan sponsor of the plan within a reasonable period of time after the occurrence of an event which results in a restricted period with respect to the plan. Such notice shall include information—

"(A) as to the duration of the restricted period, and

"(B) the restrictions under section 409A(b)(3) of the Internal Revenue Code of 1986 which apply during the restricted period to the plan sponsor and any member of a controlled group which includes such sponsor.

"(2) NOTICE OF EXISTENCE OF, AND TRANSFERS TO, NONQUALIFIED DEFERRED COMPENSATION PLANS.—

"(A) INITIAL NOTICE.—Within 30 days of receipt of a notice under paragraph (1), each plan sponsor shall notify the plan administrator of the plan described in paragraph (1)—

"(i) of nonqualified deferred compensation plans maintained by the plan sponsor or any member of a controlled group which includes such sponsor, and

"(ii) the amount of any assets transferred or otherwise reserved by the plan sponsor or such member in violation of section 409A(b)(3) of such Code during any portion of the restricted period occurring on or before the date the plan sponsor provides such notice.

"(B) ADDITIONAL NOTICES.—If, after the date on which notice is provided under subparagraph (A) and during any portion of the remaining restricted period specified in the notice provided under paragraph (1), the plan sponsor of a plan described in paragraph (1) or a member of a controlled group which includes such sponsor—

"(i) transfers or reserves assets in violation of section 409A(b)(3) of such Code, or

"(ii) establishes a new nonqualified deferred compensation plan,

the plan sponsor shall notify the plan administrator of the plan described in paragraph (1) of such transfer, reservation, or establishment within 3 days of the date of such action.

"(3) ACCESS TO FINANCIAL DATA.—Any fiduciary of the plan shall have access to the financial records of a plan sponsor or any member of a controlled group which includes such sponsor to determine if assets were transferred or otherwise reserved in violation of section 409A(b)(3) of such Code.

"(4) FORM AND MANNER.—The Secretary may prescribe the form and manner of a notice required

under this section. Such a notice shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to the recipient.

"(b) RESTRICTED PERIOD.—For purposes of this section, the term 'restricted period' means, with respect to any plan described in subsection (a)(1)—

"(1) any period—

"(A) beginning on the first day of a plan year following a plan year for which the plan's adjusted funding target attainment percentage (as defined in section 303) was less than 60 percent (determined as of the close of such year), and

"(B) ending on the last day of the first period of 2 consecutive plan years (beginning on or after such first day) for which such percentage was at least 60 percent,

"(2) any period the plan sponsor is in bankruptcy, and

"(3) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, the plan is not

1 sufficient for benefit liabilities (within the meaning
2 of section 4041).
3 In the case of a plan which is in at-risk status, paragraph
4 (1) shall be applied by substituting '80 percent' for '60
5 percent' each place it appears.
6 "(c) NONQUALIFIED DEFERRED COMPENSATION
7 PLAN.—For purposes of this section—
8 "(1) IN GENERAL.—The term 'nonqualified de-
9 ferred compensation plan' means any plan that pro-
10 vides for the deferral of compensation, other than—
11 "(A) a qualified employer plan, and
12 "(B) any bona fide vacation leave, sick
13 leave, compensatory time, disability pay, or
14 death benefit plan.
15 "(2) QUALIFIED EMPLOYER PLAN.—The term
16 'qualified employer plan' means—
17 "(A) any plan, contract, pension, account,
18 or trust described in subparagraph (A) or (B)
19 of section 219(g)(5) of the Internal Revenue
20 Code of 1986 (without regard to subparagraph
21 (A)(iii)),
22 "(B) any eligible deferred compensation
23 plan (within the meaning of section 457(b)) of
24 such Code, and

"(C) any plan described in section 415(m) of such Code.

"(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE COVERED EMPLOYEE.—

"(A) IN GENERAL.—The term 'applicable covered employee' means any—

"(i) covered employee of a plan sponsor,

"(ii) covered employee of a member of a controlled group which includes the plan sponsor, and

"(iii) former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

"(B) COVERED EMPLOYEE.—The term 'covered employee' has the meaning given such term by section 162(m)(3) of the Internal Revenue Code of 1986.

"(2) CONTROLLED GROUP.—The term 'controlled group' has the meaning given such term by section 302(d)(3).".

(2) ENFORCEMENT.—

(A) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act (29 U.S.C. 1132(a)), as amended by this Act, is amended—

(i) by striking "or" at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting "; or", and by adding at the end the following new paragraph:

"(11) by a fiduciary of a defined benefit plan which is a single-employer plan against—

"(A) a plan sponsor, a member of a controlled group which includes the plan sponsor, an applicable covered employee, or a person holding assets which are part of a nonqualified deferred compensation plan to recover on behalf of the plan—

"(i) assets which were set aside or transferred in violation of section 409A(b)(3) of the Internal Revenue Code

of 1986 (and any earnings properly allocable to the assets); or

"(ii) amounts equivalent to the assets and earnings described in clause (i); or

"(B) a plan sponsor, or a member of a controlled group which includes the plan sponsor, to compel the production of records the fiduciary is entitled to under section 306."; and

(ii) by adding at the end the following new flush sentence:

"For purposes of paragraph (11), any term used in such paragraph which is also used in section 306 shall have the meaning given such term by section 306.".

(B) AWARDING OF FEES.—Section 502(g) of such Act (29 U.S.C. 1132(g)) is amended by adding at the end the following new paragraph:

"(3) ACTIONS TO RECOVER ASSETS TRANSFERRED TO NONQUALIFIED DEFERRED COMPENSATION PLANS.—If, in any action under subsection (a)(11) by a fiduciary for or on behalf of a plan to enforce section 306 of this Act and section 409A(b)(3), a judgment is awarded in favor of the plan, the court may, in addition to any other amount, award the plan reasonable attorney's fees

and costs of the action, to be paid by the defendant''.

(3) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act, as amended by this Act, is amended by adding at the end the following new item:

''Sec. 306. Restrictions on funding of nonqualified deferred compensation plans.''.

(b) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

''(3) EMPLOYERS OF UNDERFUNDED OR TERMINATED DEFINED BENEFIT PLANS.—During any restricted period—

''(A) a plan sponsor of a defined benefit plan which is a single-employer plan, or

''(B) any member of a controlled group which includes such sponsor,

shall not directly or indirectly transfer assets, or directly or indirectly otherwise reserve assets, in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensa-

tion of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member. Any assets transferred or reserved in violation of the preceding sentence shall, for purposes of section 83, be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. For purposes of this paragraph, any term used in this paragraph which is also used in section 306 of the Employee Retirement Income Security Act of 1974 shall have the meaning given such term by such section.''.

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or other reservation of assets after December 31, 2006.

SEC. 304. MODIFICATION OF PENSION FUNDING REQUIREMENTS FOR PLANS SUBJECT TO CURRENT TRANSITION RULE.

(a) PLAN YEAR BEFORE NEW FUNDING RULES.—Section 769(c)(3) of the Retirement Protection Act of 1994, as added by section 201 of the Pension Funding Equity Act of 2004, is amended by striking ''and 2005'' and inserting '', 2005, and 2006''.

(b) PLAN YEARS AFTER NEW FUNDING RULES.—

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

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

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

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

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

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

(A) For purposes of—

(i) determining unfunded benefits under section 4006(a)(3)(E)(ii) of the Employee Retirement Income Security Act of 1974, and

(ii) determining any present value or making any computation under section 412 and section 430 of the Internal Revenue Code of 1986 and sections 302 and 303 of such Act,

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

(B) Notwithstanding section 303(f)(4) of such Act or 430(f)(4) of such Code, for purposes of section 303(c)(4)(A)(ii) of such Act and 430(c)(4)(A)(ii) of such Code, the value of plan assets shall not be reduced by the amount of the prefunding balance if, pursuant to a binding written agreement with the Pension Benefit Guaranty Corporation entered into before January 1, 2006, the prefunding balance is not available to reduce the minimum required contribution for the plan year.

(3) DEFINITIONS.—Any term used in this section which is also used in section 303 of such Act

or section 430 of such Code shall have the meaning provided such term in such section.

(4) CONFORMING AMENDMENT.—Section 769 of the Retirement Protection Act of 1994 is amended by striking subsection (c).

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

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

SEC. 401. INCREASES IN PBGC PREMIUMS.

(a) FLAT-RATE PREMIUMS.—

(1) IN GENERAL.—Section 4006(a)(3)(A)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended to read as follows:

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

"(I) for plan years beginning after December 31, 1990, and before January 1, 2006, $19, or

"(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (H),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;''.

(2) AMOUNT OF PREMIUM AFTER 2005.—Section 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)), as amended by sections 406 and 407, is amended by adding at the end the following:

''(H) AMOUNT OF PREMIUM.—

''(i) IN GENERAL.—The amount determined under this subparagraph is the greater of $30 or in the case of plan years beginning after December 31, 2006, the adjusted amount determined under clause (ii).

''(ii) ADJUSTED AMOUNT.—The adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

''(I) the contribution and benefit base (determined under section 230 of the Social Security Act) in effect in the calendar year in which the plan year begins, to

"(II) the contribution and benefit base in effect in 2006.

"(iii) ROUNDING.—If the amount determined under clause (ii) is not a multiple of $1, such product shall be rounded to the nearest multiple of $1.".

(b) RISK-BASED PREMIUMS.—

(1) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act is amended by striking clauses (iii) and (iv) and inserting the following:

"(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term 'unfunded benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)) if the value of plan assets of the plan were equal to the fair market value of such assets.

"(II) The interest rate used in valuing benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D) were applied by using the yields on investment grade corporate bonds with varying maturities rather than the average of such yields for a 12-month period.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to plan years beginning after 2006.

(c) FLAT-RATE PREMIUM ADJUSTMENT.—

(1) IN GENERAL.—Beginning in 2011, and every 5 years thereafter, the Board of Directors of the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act (29 U.S.C. 1301 et seq.) shall submit to Congress a report that describes any recommendations for adjusting the premium rate payable to the Corporation described under section 4006(a)(3)(A)(i) of such Act (as amended by subsection (a)).

(2) CONSIDERATIONS.—In developing the report described under paragraph (1), the Corporation shall consider—

(A) the national average wage index (as defined in section 209(k)(1) of the Social Security Act (42 U.S.C. 409(k)(1)));

(B) the finances of the Corporation as of the date of such report and an actuarial evaluation of the expected operations and status of the funds established under section 4005 of such title IV (29 U.S.C. 1305) for the 5 years succeeding such date;

(C) the impact of any increases in such premium rate on plan sponsors subject to such title IV; and

(D) such other factors determined relevant by the Corporation.

SEC. 402. AUTHORITY TO ENTER ALTERNATIVE FUNDING AGREEMENTS TO PREVENT PLAN TERMINATIONS.

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—

(1) DISTRESS TERMINATIONS.—Section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) is amended by adding at the end the following:

''(4) ALTERNATIVE FUNDING AGREEMENTS.—

''(A) IN GENERAL.—If the corporation determines that—

''(i) a plan meets the requirements for a distress termination under this subsection without regard to an alternative funding agreement under section 4047(a), and

''(ii) the termination of the plan would not be necessary if such an agreement were entered into,

the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into such an agreement with the contributing sponsors under the plan.

"(B) EARLY ACTION INITIATIVES.—Subject to the limitations in subsection (a)(3), if—

"(i) the corporation determines that it is reasonable to believe that a plan may be subject to a distress termination within 6 months unless action is taken, the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into an alternative funding agreement under section 4047(a); and

"(ii) the corporation, upon the request of the contributing sponsor of a plan or other person, determines that it is reasonable to believe that a plan may be subject to a distress termination within 2 years unless action is taken, the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into an alternative funding agreement under section 4047(a).".

(2) INVOLUNTARY TERMINATIONS.—Section 4042 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342) is amended by adding at the end the following:

"(i) ALTERNATIVE FUNDING AGREEMENTS.—If—

"(1) the corporation determines that it is reasonable to believe that a plan will meet the requirements for an involuntary termination under this section without regard to an alternative funding agreement under section 4047(a) within 6 months unless action is taken, or

"(B) the corporation, upon the request of the contributing sponsor of a plan or other person, determines that it is reasonable to believe that a plan may be subject to an involuntary termination within 2 years unless action is taken,

and such a termination would not be necessary if such an agreement is entered into, the corporation may request that the Secretary of the Treasury, in consultation with the corporation, enter into an alternative funding agreement under section 4047(a).".

(b) ALTERNATIVE FUNDING SCHEDULES TO PREVENT PLAN TERMINATION.—

(1) IN GENERAL.—Section 4047 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1347) is amended by—

(A) striking the section heading and all that follows through ''Whenever'' and inserting—

''SEC. 4047. ALTERNATIVE FUNDING SCHEDULES TO PREVENT TERMINATION; RESTORATION OF TERMINATED PLANS.

''(a) ALTERNATIVE FUNDING AGREEMENTS.—

''(1) IN GENERAL.—If the requirements of section 4041(c)(4) or 4042(i) are met with respect to any plan, the Secretary of the Treasury, in consultation with the corporation, may enter into an alternative funding agreement with the contributing sponsors under the plan that meets the requirements of this subsection.

''(2) OTHER REQUIREMENTS.—An alternative funding agreement may be entered into by the Secretary of the Treasury, in consultation with corporation, only if—

''(A) such Secretary finds the agreement to be in the best interests of the participants and beneficiaries; and

"(B) the agreement meets the requirements set forth by such Secretary in regulations.

"(3) ALTERNATIVE FUNDING AGREEMENT.—

"(A) IN GENERAL.—An agreement meets the requirements of this subsection if the agreement—

"(i) provides for an additional amortization schedule for a period not to exceed 10 years,

"(ii) requires the plan to pay at the time the agreement is entered into any professional fees or other expenses incurred by the Secretary of the Treasury or the corporation in connection with the agreements,

"(iii) requires approval by the corporation before the contributing sponsor establishes or maintains any other defined benefit plan other than any multiemployer plan that covers a substantial number of employees who are covered by the plan subject to the agreement or who perform substantially the same type of work with

respect to the same business operations as employees covered by such plan, and

"(iv) provides for a termination date, or a schedule of termination dates, for the purpose of the guarantee under section 4022, to apply if a plan terminates during the period that the agreement is in effect.

"(B) OTHER CONDITIONS.—Notwithstanding any other provision of this Act, an agreement meeting the requirements of this subsection may provide—

"(i) for restrictions on, or the elimination of, future accruals, but only to the extent that such restrictions or eliminations would have been permitted under section 204(g) or section 411(d)(6) of the Internal Revenue Code of 1986 if they had been implemented by a plan amendment adopted immediately before the effective date of the agreement,

"(ii) that the contributing sponsors will provide security or other collateral in such form and amount as specified in the agreement,

"(iii) conditions under which the plan could be terminated in a standard termination under section 4041(b) or conditions under which accruals to which clause (i) applies could resume in the future, and

"(iv) for such other terms and conditions as the Secretary of the Treasury, in consultation with the corporation, determines necessary to protect the interests of the corporation.

"(C) EMPLOYEE REQUIREMENTS.—

"(i) IN GENERAL.—An agreement meets the requirements of this subsection only if—

"(I) at least 60 days before the agreement is to take effect the contributing sponsors notify affected parties (other than the corporation) of the terms of the agreement and its effect on such parties, and

"(II) each employee organization representing participants in the plan approves the agreement before it takes effect.

"(ii) FORM AND MANNER OF NOTICE.—The notice under clause (i) shall be written in a manner calculated to be understood by the average plan participant and may be provided to a person designated, in writing, by the person to which it would otherwise be provided. Such notice may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

"(4) COORDINATION WITH MINIMUM FUNDING REQUIREMENTS.—Any alternative funding schedule under an agreement meeting the requirements under this subsection shall supersede the minimum funding requirements of this Act and the Internal Revenue Code of 1986. For purposes of applying this Act or such Code, any contribution required under such schedule shall be treated in the same manner as contributions required under section 302 of this Act and section 412 of such Code.

"(b) RESTORATION OF TERMINATED PLANS.—Whenever".

(2) CONFORMING AMENDMENT.—The table of contents for title IV of such Act is amended by

striking the item relating to section 4047 and inserting the following:

"4047. Alternative funding schedules to prevent terminations; restoration of terminated plans.".

(c) AMENDMENTS TO OTHER PROVISIONS.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a) of the Internal Revenue Code of 1986, as amended by sections 115 and 701 of this Act, is amended by inserting after paragraph (35) the following new paragraph:

"(36) SUCCESSOR PLANS TO CERTAIN PLANS.—If—

"(A) an alternative funding agreement described in section 4047(a) of the Employee Retirement Income Security Act of 1974 is in effect with respect to any plan, and

"(B) the plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees,

the Secretary may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under this subsection unless all benefit obligations of the

plan to which the alternative funding agreement applies have been satisfied. For purposes of this paragraph, the term 'successor employee' means any employee who is or was covered by the plan to which the alternative funding agreement applies and any employee who performs substantially the same type of work with respect to the same business operations as an employee covered by such plan.''.

(2) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(iii) PLANS SUBJECT TO ALTERNATIVE FUNDING AGREEMENTS.—This paragraph shall not apply to any plan for a plan year if an alternative funding agreement described in section 4047(a) of the Employee Retirement Income Security Act of 1974 is in effect for such year.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAINTAINED BY COMMERCIAL AIRLINES THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.

(a) IN GENERAL.—If an election is made to have this section apply to an eligible plan—

(1) in the case of any applicable plan year beginning before January 1, 2007, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (d) for the plan for the plan year, and

(2) in the case of any applicable plan year beginning on or after January 1, 2007, the minimum required contribution determined under sections 303 of such Act and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (d) for the plan for the plan year.

(b) ELIGIBLE PLAN.—For purposes of this section—

(1) IN GENERAL.—The term ''eligible plan'' means a defined benefit plan (other than a multiem-

ployer plan) to which sections 302 of such Act and 412 of such Code applies—

(A) which is sponsored by an employer—

(i) which is a commercial airline passenger airline, or

(ii) the principal business of which is providing catering services to a commercial passenger airline, and

(B) with respect to which the requirements of paragraphs (2) and (3) are met.

(2) ACCRUAL RESTRICTIONS.—

(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act, of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

(B) INCREASES IN SECTION 415 LIMITS DISREGARDED.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this paragraph unless, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term ''applicable benefit increase'' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan.

(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed

service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) if the participant—

(A) was receiving disability benefits as of such date, or

(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

(c) ELECTIONS AND RELATED TERMS.—

(1) IN GENERAL.—A plan sponsor shall make the election under subsection (a) at such time and in such manner as the Secretary of the Treasury may prescribe. Except as provided in subsection (h)(5), such election, once made, may be revoked only with the consent of such Secretary.

(2) YEARS FOR WHICH ELECTION MADE.—

(A) IN GENERAL.—The plan sponsor may select the first plan year to which the election under subsection (a) applies from among plan years ending after the date of the election. The election shall apply to such plan year and all subsequent years.

(B) ELECTION OF NEW PLAN YEAR.—The plan sponsor may specify a new plan year in the election under subsection (a) and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

(3) APPLICABLE PLAN YEAR.—The term ''applicable plan year'' means each plan year to which the election under subsection (a) applies under paragraph (1).

(d) MINIMUM REQUIRED CONTRIBUTION.—

(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance

as of the first day of the first of such years under section 303(f) of such Act and section 430(f) of such Code shall be zero.

(3) DEFINITIONS.—For purposes of this section—

(A) UNFUNDED LIABILITY.—The term ''unfunded liability'' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

(B) AMORTIZATION PERIOD.—The term ''amortization period'' means the 20-plan year period beginning with the first applicable plan year.

(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section, shall apply,

(B) the rate of interest under section 302(b) of such Act and section 412(b) of such Code, as so in effect, shall be used for all calculations requiring an interest rate, and

(C) the value of plan assets shall be equal to their fair market value.

(5) SPECIAL RULE FOR CERTAIN PLAN SPIN-OFFS.—For purposes of subsection (a), if, with respect to any eligible plan to which this subsection applies—

(A) any applicable plan year includes the date of the enactment of this Act,

(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under subsection (a)(1) for the eligible plan for such applicable plan year shall be determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of the minimum required contribution between such plans for the applicable plan year and direct the appropriate reallocation between the plans of any contributions for the applicable plan year.

(e) FUNDING STANDARD ACCOUNT AND PREFUNDING BALANCE.—Any charge or credit in the funding standard account under section 302 of such Act or section 412 of such Code, and any prefunding balance

under section 303 of such Act or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

(f) AMENDMENTS TO OTHER PROVISIONS.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a)(36) of the Internal Revenue Code of 1986, as added by section 402 of this Act, is amended by adding at the end the following: ''This paragraph shall also apply to any plan during any period during which an amortization schedule under section 403 of the Pension Security and Transparency Act of 2005 is in effect.''

(2) PBGC LIABILITY LIMITED.—Section 4022 of the Employee Retirement Income Security Act of 1974, as amended by this Act, is amended by adding at the end the following new subsection:

''(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN FUNDING REQUIREMENTS.—During any period in which an election by a plan under section 403 of the Pension Security and Transparency Act of 2005 is in effect, then this section and section 4044(a)(3) shall be applied by treating the first day of the first applicable plan year as the termination date of the plan. This subsection shall not apply to any plan for which an election under section 403(h) of such Act is in effect.''.

(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iii) of the Internal Revenue Code of 1986, as added by this Act, is amended by adding at the end the following new sentence: ''This clause shall also apply to any plan for a plan year if an election under section 403 of the Pension Security and Transparency Act of 2005 is in effect for such year.''

(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) SPECIAL RULES FOR TERMINATION OF ELIGIBLE PLANS.—During any period an election is in effect under this section with respect to an eligible plan, the Pension Benefit Guaranty Corporation shall, before it seeks or approves a termination of such plan under section 4041(c) or 4042 of the Employee Retirement Income Security Act of 1974—

(1) make a determination under section 4041(c)(4) or 4042(i) of such Act whether the termination would be necessary if the Secretary of the Treasury were to enter into an agreement under section 4047(a) of such Act which provides an alternative funding agreement to replace the amortization schedule under this section, and

(2) if the Corporation determines such an agreement would make such termination unnecessary, take all necessary actions to ensure the agreement is entered into.

The Pension Benefit Guaranty Corporation shall make the determination under paragraph (1) within 90 days of receiving all information needed in connection with a request for a termination (or if no such request is made, within 90 days of consideration of the termination by the Corporation).

(h) CERTAIN BENEFIT ACCRUALS AND INCREASES ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO COVER COSTS.—

(1) IN GENERAL.—If an employer elects the application of this subsection—

(A) the requirements of paragraphs (2) and (3) of subsection (b) shall not apply with

respect to any eligible plan maintained by the employer and specified in the election, and

(B) the minimum required contribution under subsection (d) for any plan year with respect to the plan shall be increased by the amounts described in paragraphs (2) and (3).

Any liabilities and assets taken into account under this subsection shall not be taken into account in determining the unfunded liability of the plan for purposes of subsection (d).

(2) CURRENT FUNDING OF ACCRUALS AND INCREASES.—The amount determined under this paragraph for any plan year is the target normal cost which would occur under section 303(b) of such Act and 430(b) of such Code if—

(A) any benefit accrual, or benefit increase taking effect, during the plan year by reason of this subsection were treated as having been accrued or earned during the plan year, and

(B) the plan were treated as if it were in at-risk status.

(3) FUNDING MUST BE MAINTAINED.—The amount determined under this paragraph for any plan year is the amount of any increase in the shortfall amortization charge which would occur under

section 303(c) of such Act and 430(c) of such Code if—

(A) the funding target were determined by only taking into account benefits to which paragraph (2) applied for preceding plan years,

(B) the only assets taken into account were the contributions required under this paragraph and paragraph (2) for preceding plan years (and any earnings thereon),

(C) the amortization period included only the plan year,

(D) the transition rule under section 303(c)(4)(B) of such Act and section 430(c)(4)(B) of such Code did not apply, and

(E) the plan were treated as if it were in at-risk status.

(4) SPECIAL RULES FOR YEARS BEFORE 2007.—Notwithstanding any other provision of this Act, in the case of an applicable plan year of an eligible plan to which this subsection applies which begins before January 1, 2007, in determining the amounts described in paragraphs (2) and (3) for such plan year—

(A) the provisions of, and amendments made by, sections 101, 102, 111, and 112 shall apply to such plan year, except that

(B) the interest rate used under section 303 of such Act and section 430 of such Code for purposes of applying paragraphs (2) and (3) to such plan year shall be the interest rate determined under section 302(b)(5) of such Act and section 412(b)(5) of such Code, as in effect for plan years beginning in 2005.

(5) ELECTION OUT OF SECTION.—An employer maintaining an eligible plan to which this subsection applies may make a one-time election with respect to any applicable plan year not to have this section apply to such plan year and all subsequent plan years. Subject to subsection (d)(2), the minimum required contribution under section 303 of such Act and 430 of such Code for all such plan years shall be determined without regard to this section.

(i) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—Section 410(b)(3) of such Code is amended by striking the last sentence and inserting the following: ''For purposes of subparagraph (B), management pilots who are not rep-

resented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).''

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning before, on, or after the date of the enactment of this Act.

(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

SEC. 404. LIMITATION ON PBGC GUARANTEE OF SHUTDOWN AND OTHER BENEFITS.

(a) IN GENERAL.—Section 4022(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)) is amended by adding at the end the following:

"(8) If a benefit is payable by reason of—

"(A) a plant shutdown or similar event; or

"(B) any event other than attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability,

this section shall be applied as if a plan amendment had been adopted on the date such event occurred that provides for the payment of such benefit.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to benefits that become payable as a result of a plant shutdown or other similar event, as such terms are used in the amendment made by subsection (a), that occurs after July 26, 2005.

SEC. 405. RULES RELATING TO BANKRUPTCY OF EMPLOYER.

(a) GUARANTEE.—Section 4022 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322), as amended by this Act, is amended by adding at the end the following:

"(i) BANKRUPTCY FILING SUBSTITUTED FOR TERMINATION DATE.—If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date, then this section shall be applied by treating the date such petition was filed as the termination date of the plan.".

(b) ALLOCATION OF ASSETS AMONG PRIORITY GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344) is amended by adding at the end the following:

"(e) BANKRUPTCY FILING SUBSTITUTED FOR TERMINATION DATE.—If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date, then subsection (a)(3) shall be applied by treating the date such petition was filed as the termination date of the plan.".

(c) EFFECTIVE DATE.—The amendments made this section shall apply with respect to proceedings initiated

under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, on or after the date that is 30 days after the date of enactment of this Act.

SEC. 406. PBGC PREMIUMS FOR NEW PLANS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(1) in clause (i), by inserting ''other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),'' after ''single-employer plan,'',

(2) in clause (iii), by striking the period at the end and inserting '', and'', and

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

''(v) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.''

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is

1 amended by adding at the end the following new subpara-
2 graph:

3 ''(F)(i) For purposes of this paragraph, a single-em-
4 ployer plan maintained by a contributing sponsor shall be
5 treated as a new single-employer plan for each of its first
6 5 plan years if, during the 36-month period ending on the
7 date of the adoption of such plan, the sponsor or any
8 member of such sponsor's controlled group (or any prede-
9 cessor of either) did not establish or maintain a plan to
10 which this title applies with respect to which benefits were
11 accrued for substantially the same employees as are in the
12 new single-employer plan.

13 ''(ii)(I) For purposes of this paragraph, the term
14 'small employer' means an employer which on the first day
15 of any plan year has, in aggregation with all members of
16 the controlled group of such employer, 100 or fewer em-
17 ployees.

18 ''(II) In the case of a plan maintained by two or more
19 contributing sponsors that are not part of the same con-
20 trolled group, the employees of all contributing sponsors
21 and controlled groups of such sponsors shall be aggregated
22 for purposes of determining whether any contributing
23 sponsor is a small employer.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans first effective after December 31, 2005.

SEC. 407. PBGC PREMIUMS FOR SMALL AND NEW PLANS.

(a) NEW PLANS.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)), as amended by this Act, is amended by adding at the end the following new clause:

''(iv) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

''(I) 0 percent, for the first plan year.

''(II) 20 percent, for the second plan year.

''(III) 40 percent, for the third plan year.

''(IV) 60 percent, for the fourth plan year.

''(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor

1 and each member of any controlled group including the
2 sponsor (or any predecessor of either) did not establish
3 or maintain a plan to which this title applies with respect
4 to which benefits were accrued for substantially the same
5 employees as are in the new plan.''

6 (b) SMALL PLANS.—Paragraph (3) of section
7 4006(a) of the Employee Retirement Income Security Act
8 of 1974 (29 U.S.C. 1306(a)), is amended—

9 (1) by striking ''The'' in subparagraph (E)(i)
10 and inserting ''Except as provided in subparagraph
11 (G), the'', and

12 (2) by inserting after subparagraph (F) the fol-
13 lowing new subparagraph:

14 ''(G)(i) In the case of an employer who has 25 or
15 fewer employees on the first day of the plan year, the addi-
16 tional premium determined under subparagraph (E) for
17 each participant shall not exceed $5 multiplied by the
18 number of participants in the plan as of the close of the
19 preceding plan year.

20 ''(ii) For purposes of clause (i), whether an employer
21 has 25 or fewer employees on the first day of the plan
22 year is determined by taking into consideration all of the
23 employees of all members of the contributing sponsor's
24 controlled group. In the case of a plan maintained by two
25 or more contributing sponsors, the employees of all con-

tributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.''

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans first effective after December 31, 2005.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2005.

SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL.—Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended—

(1) by striking ''(b)'' and inserting ''(b)(1)'', and

(2) by inserting at the end the following new paragraph:

''(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).''

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

SEC. 409. RULES FOR SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—Section 4022(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to read as follows:

''(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(i) owns the entire interest in an unincorporated trade or business,

''(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

''(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 (other than paragraph (3)(C) thereof) shall apply, including the application of such rules under section 414(c) of such Code.

"(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

"(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

"(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner."

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking "section 4022(b)(5)" and inserting "section 4022(b)(5)(B)".

(2) Section 4044(b) of such Act (29 U.S.C. 1344(b)) is amended—

(A) by striking "(5)" in paragraph (2) and inserting "(4), (5),", and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.''

(c) CONFORMING AMENDMENTS.—

(1) Section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321) is amended—

(A) in subsection (b)(9), by striking ''as defined in section 4022(b)(6)'', and

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

"(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(1) owns the entire interest in an unincorporated trade or business,

"(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

"(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 (other than paragraph (3)(C) thereof) shall apply, including the application of such rules under section 414(c) of such Code."

(2) Section 4043(c)(7) of such Act (29 U.S.C. 1343(c)(7)) is amended by striking "section 4022(b)(6)" and inserting "section 4021(d)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2005, and

(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation after such date.

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2006.

SEC. 410. ACCELERATION OF PBGC COMPUTATION OF BENEFITS ATTRIBUTABLE TO RECOVERIES FROM EMPLOYERS.

(a) MODIFICATION OF AVERAGE RECOVERY PERCENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LIABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

"(ii) notices of intent to terminate were provided (or in the case of a termination by the corporation, a notice of determination under section 4042 was issued) during the 5-Federal fiscal year period ending with the third fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate (or the notice of determination under section 4042) with respect to the plan termination for which the recovery ratio is being determined."

(b) VALUATION OF SECTION 4062(c) LIABILITY FOR DETERMINING AMOUNTS PAYABLE BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.—

(1) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(c)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 13) is amended to read as follows:

"(A) IN GENERAL.—Except as provided in subparagraph (C), the term 'recovery ratio' means the ratio which—

"(i) the sum of the values of all recoveries under section 4062, 4063, or 4064, determined by the corporation in connec-

tion with plan terminations described under subparagraph (B), bears to

"(ii) the sum of all unfunded benefit liabilities under such plans as of the termination date in connection with any such prior termination.".

(2) ALLOCATION OF ASSETS.—Section 4044 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1362) is amended by adding at the end the following new subsection:

"(e) VALUATION OF SECTION 4062(c) LIABILITY FOR DETERMINING AMOUNTS PAYABLE BY CORPORATION TO PARTICIPANTS AND BENEFICIARIES.—

"(1) IN GENERAL.—In the case of a terminated plan, the value of the recovery of liability under section 4062(c) allocable as a plan asset under this section for purposes of determining the amount of benefits payable by the corporation shall be determined by multiplying—

"(A) the amount of liability under section 4062(c) as of the termination date of the plan, by

"(B) the applicable section 4062(c) recovery ratio.

"(2) SECTION 4062(c) RECOVERY RATIO.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the term 'section 4062(c) recovery ratio' means the ratio which—

"(i) the sum of the values of all recoveries under section 4062(c) determined by the corporation in connection with plan terminations described under subparagraph (B), bears to

"(ii) the sum of all the amounts of liability under section 4062(c) with respect to such plans as of the termination date in connection with any such prior termination.

"(B) PRIOR TERMINATIONS.—A plan termination described in this subparagraph is a termination with respect to which—

"(i) the value of recoveries under section 4062(c) have been determined by the corporation, and

"(ii) notices of intent to terminate were provided (or in the case of a termination by the corporation, a notice of determination under section 4042 was

issued) during the 5-Federal fiscal year period ending with the third fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate (or the notice of determination under section 4042) with respect to the plan termination for which the recovery ratio is being determined.

"(C) EXCEPTION.—In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds $20,000,000, the term 'section 4062(c) recovery ratio' means, with respect to the termination of such plan, the ratio of—

"(i) the value of the recoveries on behalf of the plan under section 4062(c), to

"(ii) the amount of the liability owed under section 4062(c) as of the date of plan termination to the trustee appointed under section 4042 (b) or (c).

"(3) SUBSECTION NOT TO APPLY.—This subsection shall not apply with respect to the determination of—

"(A) whether the amount of outstanding benefit liabilities exceeds $20,000,000, or

"(B) the amount of any liability under section 4062 to the corporation or the trustee appointed under section 4042 (b) or (c).

"(4) DETERMINATIONS.—Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply for any termination for which notices of intent to terminate are provided (or in the case of a termination by the corporation, a notice of determination under section 4042 under the Employee Retirement Income Security Act of 1974 is issued) on or after the date which is 30 days after the date of enactment of this section.

SEC. 411. TREATMENT OF CERTAIN PLANS WHERE CESSATION OR CHANGE IN MEMBERSHIP OF A CONTROLLED GROUP.

(a) IN GENERAL.—Section 4041(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(b)) is amended by adding at the end the following new paragraph:

"(5) SPECIAL RULE FOR CERTAIN PLANS WHERE CESSATION OR CHANGE IN MEMBERSHIP OF A CONTROLLED GROUP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) there is transaction or series of transactions which result in a single-employer plan which is a defined benefit plan being maintained by an employer which is not a member of the same controlled group of which the employer maintaining the plan before such transaction or series of transactions was a member,

"(ii) the corporation treats the transaction or series of transactions as resulting in a standard termination to which this subsection applies, and

"(iii) the plan is fully funded,

then the interest rate used in determining whether the plan is sufficient for benefit liabilities for purposes of this subsection shall be the interest rate used in determining whether the plan is fully funded.

"(B) LIMITATIONS.—Subparagraph (A) shall not apply to any transaction or series of transactions unless—

"(i) any employer maintaining the plan immediately before or after such transaction or series of transactions—

"(I) has an outstanding senior unsecured debt instrument which is rated investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

"(II) if no such debt instrument of such employer has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer investment grade, and

"(ii) the employer maintaining the plan after the transaction or series of transactions employs at least 30 percent of the employees located in the United States

1 who were employed by such employer im-
2 mediately before the transaction or series
3 of transactions.
4 "(C) FULLY FUNDED.—For purposes of
5 subparagraph (A), a plan shall be treated as
6 fully funded with respect to any transaction or
7 series of transactions if—
8 "(i) in the case of a transaction or se-
9 ries of transactions which occur in a plan
10 year beginning before January 1, 2007,
11 the funded current liability percentage de-
12 termined under section 302(d) for the plan
13 year is at least 100 percent, and
14 "(ii) in the case of a transaction or
15 series of transactions which occur in a plan
16 year beginning on or after such date, the
17 funding target attainment percentage de-
18 termined under section 303 is, as of the
19 valuation date for such plan year, at least
20 100 percent."
21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to any transaction or series of
23 transactions occurring on and after the date of the enact-
24 ment of this Act.

SEC. 412. EFFECT OF TITLE.

The decreases in Federal outlays resulting from the enactment of this title, and the amendments made by this title, shall be treated as in lieu of the decreases in Federal outlays which—

(1) resulted from amendments made to title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.); and

(2) were contained in an Act enacted pursuant to the concurrent resolution on the budget for fiscal year 2006.

SEC. 413. AGE REQUIREMENT FOR EMPLOYERS.

(a) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)) is amended in the flush matter following paragraph (3), by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, paragraph (3) shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(b) MULTIEMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022B(a) of the Employee Retirement In-

come Security Act of 1974 (29 U.S.C. 1322b(a)) is amended by adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age before age 65, this subsection shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits payable on or after the date of enactment of this Act.

TITLE V—DISCLOSURE

SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.

(a) IN GENERAL.—Section 101(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)) is amended to read as follows:

''(f) DEFINED BENEFIT PLAN FUNDING NOTICES.—

''(1) IN GENERAL.—The administrator of a defined benefit plan shall for each plan year provide a plan funding notice to the Pension Benefit Guaranty Corporation, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a

multiemployer plan, to each employer that has an obligation to contribute to the plan.

"(2) INFORMATION CONTAINED IN NOTICES.—

"(A) IDENTIFYING INFORMATION.—Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan's principal administrative officer, each plan sponsor's employer identification number, and the plan number of the plan.

"(B) SPECIFIC INFORMATION.—A plan funding notice under paragraph (1) shall include—

"(i)(I) in the case of a single-employer plan, a statement as to whether the plan's funding target attainment percentage (as defined in section 303(d)(2)) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages), or

"(II) in the case of a multiemployer plan, a statement as to whether the plan's funded percentage (as defined in section

305(i)) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages),

"(ii)(I) in the case of a single-employer plan, a statement of the value of the plan's assets and liabilities for the plan year to which the notice relates as of the last day of the plan year to which the notice relates determined using the asset valuation under subclause (I) of section 4006(a)(3)(E)(iii) and the interest rate under subclause (II) of such section, and

"(II) in the case of a multiemployer plan, a statement of the value of the plan's assets and liabilities for the plan year to which the notice relates as the last day of such plan year,

"(iii) a statement of the number of participants who are—

"(I) retired or separated from service and are receiving benefits,

"(II) retired or separated participants entitled to future benefits, and

"(II) active participants under the plan,

"(iv) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates,

"(v) in the case of a multiemployer plan, whether the plan was in critical or endangered status under section 305 for such plan year and, if so—

"(I) a list of the actions taken by the plan to improve its funding status, and

"(II) a statement describing how a person may obtain a copy of the plan's improvement or rehabilitation plan, as appropriate, adopted under section 305 and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement,

"(vi) a summary of any funding improvement plan, rehabilitation plan, or

modification thereof adopted under section 305 during the plan year to which the notice relates,

"(vii) in the case of any plan amendments, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year (as defined in regulations by the Secretary), an explanation of the amendment, schedule increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities,

"(viii)(I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV, or

"(II) in the case of a multiemployer plan, a summary of the rules governing reorganization or insolvency, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such lim-

itations, reductions, and suspensions on the plan), and

"(ix) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

"(C) OTHER INFORMATION.—Each notice under paragraph (1) shall include—

"(i) in the case of a multiemployer plan, a statement that the plan administrator shall provide, upon written request, to any labor organization representing plan participants and beneficiaries and any employer that has an obligation to contribute to the plan, a copy of the annual report filed with the Secretary under section 104(a), and

"(ii) any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.

"(3) TIME FOR PROVIDING NOTICE.—

"(A) IN GENERAL.—Any notice under paragraph (1) shall be provided not later than 90 days after the end of the plan year to which the notice relates.

"(B) EXCEPTION FOR SMALL PLANS.—In the case of a small plan (as such term is used under section 303(g)(2)(B)) any notice under paragraph (1) shall be provided upon filing of the annual report under section 104(a).

"(4) FORM AND MANNER.—Any notice under paragraph (1)—

"(A) shall be provided in a form and manner prescribed in regulations of the Secretary,

"(B) shall be written in a manner so as to be understood by the average plan participant, and

"(C) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.".

(b) MODEL NOTICE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model version of the notice required by section 101(f) of the Employee Retirement Income Security Act of 1974. The Secretary of Labor may promul-

gate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection.

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

SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN INFORMATION.

(a) FINANCIAL INFORMATION WITH RESPECT TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

''(k) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

''(1) IN GENERAL.—Each administrator of a multiemployer plan shall, upon written request, furnish to any plan participant or beneficiary, employee representative, or any employer that has an obligation to contribute to the plan—

''(A) a copy of any periodic actuarial report (including sensitivity testing) received by

the plan for any plan year which has been in the plan's possession for at least 30 days, and

"(B)(i) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days, or

"(ii) at the discretion of the person submitting the written request, a copy of a quarterly summary of the financial reports described clause (i).

"(2) COMPLIANCE.—Information required to be provided under paragraph (1) —

"(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary,

"(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided, and

"(C) shall not—

"(i) include any individually identifiable information regarding any plan partic-

ipant, beneficiary, employee, fiduciary, or contributing employer, or

"(ii) reveal any proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

"(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.".

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking "section 101(j)" and inserting "subsection (j) or (k) of section 101".

(3) REGULATIONS.—The Secretary shall prescribe regulations under section 101(k)(2) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1)) not later than 270 days after the date of the enactment of this Act.

(b) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (a)) is amended—

(A) by redesignating subsection (l) as subsection (m); and

(B) by inserting after subsection (k) the following new subsection:

''(l) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

''(1) IN GENERAL.—The plan sponsor or administrator of a multiemployer plan shall, upon written request, furnish to any employer who has an obligation to contribute to the plan a notice of—

''(A) the estimated amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

''(B) an explanation of how such estimated liability amount was determined, including the actuarial assumptions and methods used to determine the value of the plan liabilities and assets, the data regarding employer contributions, unfunded vested benefits, annual changes in the

plan's unfunded vested benefits, and the application of any relevant limitations on the estimated withdrawal liability.

For purposes of subparagraph (B), the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

"(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

"(A) shall be provided to the requesting employer within—

"(i) 180 days after the request in a form and manner prescribed in regulations of the Secretary, or

"(ii) subject to regulations of the Secretary, such longer time as may be necessary in the case of a plan that determines withdrawal liability based on any method described under paragraph (4) or (5) of section 4211(c); and

"(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

"(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.".

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking "section 101(j) or (k)" and inserting "subsection (j), (k), or (l) of section 101".

(c) NOTICE OF AMENDMENT REDUCING FUTURE ACCRUALS.—Section 204(h)(1) of such Act (29 U.S.C. 1054(h)(1)) is amended by inserting at the end before the period "and to each employer who has an obligation to contribute to the plan.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 503. ADDITIONAL ANNUAL REPORTING REQUIREMENTS.

(a) ADDITIONAL ANNUAL REPORTING REQUIREMENTS WITH RESPECT TO DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 103 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—

(A) in subsection (a)(1)(B), by striking ''subsections (d) and (e)'' and inserting ''subsections (d), (e), and (f)''; and

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

''(f) ADDITIONAL INFORMATION WITH RESPECT TO DEFINED BENEFIT PLANS.—

''(1) GENERAL INFORMATION.—With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

''(A) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under 2 or more pension plans as of immediately before such plan year, the funded percentage of each of such 2 or more pension plans as of the last day of such

plan year and the funded percentage of the plan with respect to which the annual report is filed as of the last day of such plan year.

"(B) For purposes of this paragraph, the term 'funded percentage'—

"(i) in the case of a single-employer plan, means the funding target attainment percentage, as defined in section 303(d)(2), and

"(ii) in the case of a multiemployer plan, has the meaning given such term in section 305(i)(2).

"(2) ADDITIONAL INFORMATION FOR MULTIEMPLOYER PLANS.—With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include, in addition to the information required under paragraph (1), the following, as of the end of the plan year to which the notice relates:

"(A) The number of employers obligated to contribute to the plan.

"(B) A list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year.

"(C) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year and for each of the 2 preceding plan years. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

"(D) The ratio of—

"(i) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the plan year, to

"(ii) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during each of the 2 preceding plan years.

"(E) Whether the plan received an amortization extension under section 304(d) or section 431(d) of the Internal Revenue Code of 1986 for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been re-

quired without regard to the extension, and the period of such extension.

"(F) Whether the plan used the shortfall funding method (as such term is used in section 305) for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been required without regard to the use of such method, and the period of use of such method.

"(G) Whether the plan was in critical or endangered status under section 305 for such plan year, and if so, a summary of any funding improvement or rehabilitation plan (or modification thereto) adopted during the plan year, and the funding ratio of the plan.

"(H) The number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers.

"(I) In the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities

of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation.''.

(2) GUIDANCE BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor shall publish guidance to assist multiemployer defined benefit plans to—

(i) identify and enumerate plan participants for whom there is no employer with an obligation to make an employer contribution under the plan; and

(ii) report such information under section 103(f)(2)(D) of the Employee Retirement Income Security Act of 1974 (as added by this section).

(B) WAIVER OF REQUIREMENT.—The Secretary of Labor shall waive the requirement under section 103(f)(2)(D) of such Act (as

added by this section) for the construction and entertainment industries.

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting after paragraph (11) the following new paragraph:

''(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.''.

(c) FORM AND MANNER OF REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended by—

(1) striking ''(3) Within'' and inserting—

''(A) IN GENERAL.—Within''; and

(2) adding at the end the following:

''(B) FORM OF REPORT.—The material provided pursuant to subparagraph (A) to summarize the latest annual report shall be written in a manner calculated to be understood by the average plan participant.

(d) FURNISHING SUMMARY PLAN INFORMATION TO EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 104 of such Act (29 U.S.C. 1024) is amended—

(A) in the header, by striking ''PARTICIPANTS'' and inserting ''PARTICIPANTS AND CERTAIN EMPLOYERS'';

(B) redesignating subsection (d) as subsection (e); and

(C) inserting after subsection (c) the following:

''(d) FURNISHING SUMMARY PLAN INFORMATION TO EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF MULTIEMPLOYER PLANS.—

''(1) IN GENERAL.—With respect to a multiemployer plan subject to this section, within 30 days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan, the administrators shall furnish to each employee organization, employer with an obligation to contribute to the plan, and the Pension Benefit Guaranty Corporation, a report that contains—

''(A) a description of the contribution schedules and benefit formulas under the plan,

and any modification to such schedules and formulas, during such plan year;

"(B) the number of employers obligated to contribute to the plan;

"(C) a list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year;

"(D) the number of participants under the plan on whose behalf no employer contributions (which, for purposes of this paragraph, means, in connection with a participant, a contribution made by an employer as an employer of such participant) have been made to the plan for such plan year and for each of the 2 preceding plan years;

"(E) whether the plan was in critical or endangered status under section 305 for such plan year and, if so, include—

"(i) a list of the actions taken by the plan to improve its funding status; and

"(ii) a statement describing how a person may obtain a copy of the plan's improvement or rehabilitation plan, as appropriate, adopted under section 305 and the actuarial and financial data that dem-

onstrate any action taken by the plan toward fiscal improvement;

"(H) the number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers, as reported on the annual report for the plan year to which the report under this subsection relates;

"(I) in the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation;

"(J) a description as to whether the plan—

"(i) sought or received an amortization extension under section 304(d) or sec-

tion 431(d) of the Internal Revenue Code of 1986 for such plan year;

"(ii) used the shortfall funding method (as such term is used in section 305) for such plan year; or

"(iii) was in critical or endangered status under section 305 for such plan year; and

"(K) notification of the right under this section of the recipient to a copy of the annual report filed with the Secretary under subsection (a), summary annual report, summary plan description, summary of any material modification of the plan, upon written request, but that—

"(i) in no case shall a recipient be entitled to receive more than one copy of any such report described during any one 12-month period; and

"(ii) the administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to this subparagraph.

"(2) EFFECT OF SECTION.—Nothing in this section waives any other provision under this title re-

quiring plan administrators to provide, upon request, information to employers that have an obligation to contribution under the plan.''.

(e) MODEL FORM.—Not later than 270 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model form for providing the statements, schedules, and other material required to be provided under section 104(b)(3) of the Employee Retirement Income Security Act of 1974, as amended by this section. The Secretary of Labor may promulgate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection.

(f) FIVE-YEAR REPORT WITH RESPECT TO MULTIEMPLOYER PLANS.—Section 4022A(f) of such Act (29 U.S.C. 1322a(f)) is amended by adding at the end the following:

''(6) Not later than 5 years after the date of the enactment of the Pension Security and Transparency Act of 2005, and at least every fifth year thereafter, the corporation shall submit to Congress a report that contains a description of the fiscal conditions of the multiemployer pension plan system as of the date of such report based on the information submitted to the corporation under section 104(d).''.

(g) CONFORMING AMENDMENT.—Title IV of such Act (29 U.S.C. 1301 et seq.) is amended by striking section 4011.

(h) EFFECTIVE DATES.—

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

(2) SPECIAL RULE.—Notwithstanding the provisions of paragraph (1), the requirement under section 103(f)(2)(D) of the Employee Retirement Income Security Act (as added by this section) shall apply to plan years beginning after December 31, 2007.

SEC. 504. TIMING OF ANNUAL REPORTING REQUIREMENTS.

(a) FILING AFTER 285 DAYS AFTER PLAN YEAR ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of such Act (29 U.S.C. 1024(a)(1)) is amended by inserting after the first sentence the following new sentence: ''In the case of a pension plan, the Secretary may extend the deadline for filing the annual report for any plan year past 285 days after the close of the plan year only on a case by case basis and only in cases of hardship, in accordance with regulations which shall be prescribed by the Secretary.''.

(b) INTERNET DISPLAY OF INFORMATION.—Section 104(b) of such Act (29 U.S.C. 1024(b)) is amended by adding at the end the following:

''(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on an Internet website maintained by the Secretary and other appropriate media. Such information shall also be displayed on any Internet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor), in accordance with regulations which shall be prescribed by the Secretary.''.

(c) SUMMARY ANNUAL REPORT FILED WITHIN 30 DAYS AFTER DEADLINE FOR FILING OF ANNUAL REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)), as amended by section 503, is amended by—

(1) striking ''(3)(A) Within 210 days after the close of the fiscal year,'' and inserting ''(3)(A) Within 30 days after the due date under subsection

(a)(1) for the filing of the annual report for the fiscal year of the plan";

(2) striking "the latest" and inserting "such"; and

(3) adding at the end the following

"(C) DATE OF INTERNET DISPLAY.—Display of the summary annual report on the Internet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) by the date required under subparagraph (A) shall be treated as furnishing such report to each participant and beneficiary receiving benefits under the plan by such date, except that such report shall be furnished to each such participant and beneficiary as soon as practicable thereafter, and in no event later the 30 days after such date.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 505. SECTION 4010 FILINGS WITH THE PBGC.

(a) CHANGE IN CRITERIA FOR PERSONS REQUIRED TO PROVIDE INFORMATION TO PBGC.—Section 4010(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310(b)) is amended—

(1) in paragraph (1)—

(A) by striking ''(1) the aggregate'' and inserting ''(1)(A) the aggregate'';

(B) by striking the semicolon and inserting ''; and'';

(C) by inserting after subparagraph (A) the following:

''(B)(i) the aggregate funding targets attainment percentage of the plan (as defined in subsection (d)) is less than 90 percent; or

''(ii) any debt instrument of the plan sponsor or the plan sponsor has received a rating described in subclause (I) or (II) of section 303(i)(5)(A)(i);''; and

(2) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, and by inserting before paragraph (4) (as so redesignated) the following new paragraphs:

''(2) the aggregate funding targets attainment percentage of the plan (as defined in subsection (d)) is less than 60 percent;

''(3)(A) the aggregate funding targets attainment percentage of the plan (as defined in subsection (d)) is less than 75 percent, and

''(B) the plan sponsor is in an industry with respect to which the corporation determines that there

is substantial unemployment or underemployment and the sales and profits are depressed or declining;''.

(b) ADDITIONAL INFORMATION REQUIRED.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

''(d) ADDITIONAL INFORMATION REQUIRED.—

''(1) IN GENERAL.—The information submitted to the corporation under subsection (a) shall include—

''(A) the amount of benefit liabilities under the plan determined using the assumptions used by the corporation in determining liabilities;

''(B) the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years; and

''(C) the funding target attainment percentage of the plan.

''(2) DEFINITIONS.—For purposes of this subsection:

''(A) VALUE OF PLAN ASSETS.—The term 'value of plan assets' means the value of plan assets, as determined under section 303(g)(3).

"(B) FUNDING TARGET.—The term 'funding target' has the meaning provided under section 303(d)(1).

"(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'funding target attainment percentage' has the meaning provided in section 303(d)(2).

"(D) AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.—The term 'aggregate funding targets attainment percentage' means, with respect to a contributing sponsor for a plan year, the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which—

"(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

"(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

"(E) AT-RISK STATUS.—The term 'at-risk status' has the meaning provided in section 303(i)(4).

"(e) NOTICE TO CONGRESS.—The Corporation shall, on an annual basis, submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives, a summary report of the information submitted to the Corporation under this section.".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

SEC. 506. DISCLOSURE OF TERMINATION INFORMATION TO PLAN PARTICIPANTS.

(a) DISTRESS TERMINATIONS.—

(1) IN GENERAL.—Section 4041(c)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)) is amended by adding at the end the following:

"(D) DISCLOSURE OF TERMINATION INFORMATION.—

"(i) IN GENERAL.—A plan administrator that has filed a notice of intent to terminate under subsection (a)(2) shall provide to an affected party any informa-

tion provided to the corporation under paragraph (2) not later than 15 days after—

"(I) receipt of a request from the affected party for the information; or

"(II) the provision of new information to the corporation relating to the previous request.

"(ii) CONFIDENTIALITY.—

"(I) IN GENERAL.—The plan administrator shall not provide information under clause (i) in a form that includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

"(II) LIMITATION.—A court may limit disclosure under this subparagraph of confidential information described in section 552(b) of title 5, United States Code, to any authorized representative of the participants or beneficiaries that agrees to ensure the confidentiality of such information.

"(iii) FORM AND MANNER OF INFORMATION; CHARGES.—

"(I) FORM AND MANNER.—The corporation may prescribe the form and manner of the provision of information under this subparagraph, which shall include delivery in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to individuals to whom the information is required to be provided.

"(II) REASONABLE CHARGES.—A plan sponsor may charge a reasonable fee for any information provided under this subparagraph in other than electronic form.

"(iv) AUTHORIZED REPRESENTATIVE.—For purposes of this subparagraph, the term 'authorized representative' means any employee organization representing participants in the pension plan.".

(2) CONFORMING AMENDMENT.—Section 4041(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(1)) is amend-

ed in subparagraph (C) by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (D)''.

(b) INVOLUNTARY TERMINATIONS.—

(1) IN GENERAL.—Section 4042(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342(c)) is amended by—

(A) striking ''(c) If the'' and inserting ''(c)(1) If the'';

(B) redesignating paragraph (3) as paragraph (2); and

(C) adding at the end the following:

''(3) DISCLOSURE OF TERMINATION INFORMATION.—

''(A) IN GENERAL.—

''(i) INFORMATION FROM PLAN SPONSOR OR ADMINISTRATOR.—A plan sponsor or plan administrator of a single-employer plan that has received a notice from the corporation of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in conjunction with the plan termination.

''(ii) INFORMATION FROM CORPORATION.—The corporation shall provide a

copy of the administrative record, including the trusteeship decision record of a termination of a plan described under clause (i).

"(B) TIMING OF DISCLOSURE.—The plan sponsor, plan administrator, or the corporation, as applicable, shall provide the information described in subparagraph (A) not later than 15 days after—

"(i) receipt of a request from an affected party for such information; or

"(ii) in the case of information described under subparagraph (A)(i), the provision of any new information to the corporation relating to a previous request by an affected party.

"(C) CONFIDENTIALITY.—

"(i) IN GENERAL.—The plan administrator and plan sponsor shall not provide information under subparagraph (A)(i) in a form which includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

"(ii) LIMITATION.—A court may limit disclosure under this paragraph of confidential information described in section 552(b) of title 5, United States Code, to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv)) of the participants or beneficiaries that agree to ensure the confidentiality of such information.

"(D) FORM AND MANNER OF INFORMATION; CHARGES.—

"(i) FORM AND MANNER.—The corporation may prescribe the form and manner of the provision of information under this paragraph, which shall include delivery in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to individuals to whom the information is required to be provided.

"(ii) REASONABLE CHARGES.—A plan sponsor may charge a reasonable fee for any information provided under this paragraph in other than electronic form.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any plan termination under title

IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.) with respect to which the notice of intent to terminate (or in the case of a termination by the Pension Benefit Guaranty Corporation, a notice of determination under section 4042 of such Act (29 U.S.C. 1342)) occurs after the date of enactment of this Act.

SEC. 507. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under subparagraph (B) of section 203(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation in connection with any suspension of benefits described in such subparagraph—

(1) in the case of an employee who returns to service described in section 203(a)(3)(B) (i) or (ii) of such Act after commencement of payment of benefits under the plan, shall be made during the first calendar month or the first 4- or 5-week payroll period ending in a calendar month in which the plan withholds payments, and

(2) in the case of any employee who is not described in paragraph (1)—

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2005.

SEC. 508. STUDY AND REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine the effectiveness of the enforcement of provisions in the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and in other Federal laws designed to protect pension plans and the assets and participants of such plan from fraud and mismanagement, including excessive investment management fees, violations of fiduciary duties under Title I of such Act, and the quality of plan assets.

(b) CONTENT OF STUDY.—The study described in subsection (a) shall include:

(1) An identification of which Federal departments and agencies have responsibility for enforce-

ment of these provisions, including the recovery of lost plan assets due to fraud and mismanagement.

(2) Identification of all administrative enforcement powers, procedures, and strategies used by the Securities and Exchange Commission that have the potential to improve the Department of Labor's enforcement of the fiduciary provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(3) Identification of any statutory or other barriers that restrict the Department of Labor's authority to use such powers, procedures, and strategies identified in paragraph (2).

(4) An evaluation of whether giving additional investigative or enforcement authority to the Pension Benefit Guaranty Corporation or the Securities and Exchange Commission would significantly improve enforcement of those provisions.

(5) An evaluation of the current authority of the Pension Benefit Guaranty Corporation to bring actions to recover any funds lost by pension plans due to violations of any fiduciary standards under Title I of such Act or other Federal statutes.

(6) The impact that expanding any such authority by the Pension Benefit Guaranty Corpora-

tion to bring such actions would have on the Corporation's solvency.

(c) REPORT.—Not later than 6 months after the enactment of this Act, the Comptroller General shall submit a report to Congress on the study conducted under subsection (a) that includes such recommendations for legislation or administrative action as the Comptroller General determines are appropriate.

TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PENSION PLANS

SEC. 601. PROSPECTIVE APPLICATION OF AGE DISCRIMINATION, CONVERSION, AND PRESENT VALUE ASSUMPTION RULES.

(a) APPLICATION OF AGE DISCRIMINATION PROHIBITIONS.—

(1) AMENDMENT OF ERISA.—Section 204(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)) is amended by adding at the end the following:

"(5) SPECIAL RULES FOR CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PLANS.—

"(A) IN GENERAL.—A qualified cash balance plan shall not be treated as violating the

requirements of paragraph (1)(H) merely because it may reasonably be expected that the period over which interest credits will be made to a participant's accumulation account (or its equivalent) is longer for a younger participant. This paragraph shall not apply to any plan if the rate of any pay credit or interest credit to such an account under the plan decreases by reason of the participant's attainment of any age.

"(B) QUALIFIED CASH BALANCE PLAN.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified cash balance plan' means a cash balance plan which meets the vesting requirement under clause (ii) and the interest credit requirement under clause (iii).

"(ii) VESTING REQUIREMENTS.—A plan meets the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(iii) INTEREST CREDITS.—A plan meets the requirements of this clause if the terms of the plan provide that any interest credit (or equivalent amount) for any plan year shall be at a rate which—

"(I) is not less than the applicable Federal mid-term interest rate (as determined under section 1274(d)(1) of the Internal Revenue Code of 1986), and

"(II) is not greater than the greater of the rate determined under subclause (I) or a rate equal to the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds.

"(iv) DETERMINATION OF RATES.—For purposes of clause (iii)(II), the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds shall be determined by the Secretary of the Treasury on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury. The Secretary of the Treasury shall make publicly avail-

able the indices and methodology used to determine the rate.

"(v) VARIABLE RATE OF INTEREST.—If the interest credit rate under the plan is a variable rate, the plan shall provide that, upon the termination of the plan, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date.

"(C) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' means a defined benefit plan under which—

"(i) the accrued benefit is determined by reference to the balance of a hypothetical accumulation account, and

"(ii) pay credits and interest credits are credited to such account.

"(D) REGULATIONS TO INCLUDE SIMILAR OR OTHER HYBRID PLANS.—

"(i) CASH BALANCE PLAN.—The Secretary of the Treasury shall issue regulations which include in the definition of cash balance plan any defined benefit plan

(or any portion of such a plan) which has an effect similar to a cash balance plan. Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding sentence, such plan shall be treated as a cash balance plan.

"(ii) QUALIFIED CASH BALANCE PLAN.—The Secretary of the Treasury may in the regulations issued under clause (i) provide for the treatment of a cash balance plan as a qualified cash balance plan in cases where the cash balance plan has an effect similar to the qualified cash balance plan.".

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4(i)(2) of the Age Discrimination of Employment Act of 1967 (29 U.S.C. 623(i)(2)) is amended—

(A) by inserting "(A)" after "(2)", and

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

"(B) A defined benefit plan which is treated as a qualified cash balance plan for purposes of section 204(b)(5) of the Employee Retirement Income Security Act of 1974 shall not be treated as violating the requirements of paragraph (1)(A) merely because it may reasonably be expected that the period over which interest credits will be made under the plan to a participant's accumulation account (or its equivalent) is longer for a younger participant. This subparagraph shall not apply to any plan if the rate of any pay credit or interest credit to such an account under the plan decreases by reason of the participant's attainment of any age.".

(3) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(b) of the Internal Revenue Code of 1986 (relating to accrued benefit requirements) is amended by adding at the end the following:

"(5) SPECIAL RULES FOR CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PLANS.—

"(A) IN GENERAL.—A qualified cash balance plan shall not be treated as violating the requirements of paragraph (1)(H) merely because it may reasonably be expected that the period over which interest credits will be made to a participant's accumulation account (or its

equivalent) is longer for a younger participant. This paragraph shall not apply to any plan if the rate of any pay credit or interest credit to such an account under the plan decreases by reason of the participant's attainment of any age.

"(B) QUALIFIED CASH BALANCE PLAN.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified cash balance plan' means a cash balance plan which meets the vesting requirement under clause (ii) and the interest credit requirement under clause (iii).

"(ii) VESTING REQUIREMENTS.—A plan meets the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(iii) INTEREST CREDITS.—A plan meets the requirements of this clause if the terms of the plan provide that any interest credit (or equivalent amount) for any plan year shall be at a rate which—

"(I) is not less than the applicable Federal mid-term interest rate (as determined under section 1274(d)(1)), and

"(II) is not greater than the greater of the rate determined under subclause (I) or a rate equal to the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds.

"(iv) DETERMINATION OF RATES.—For purposes of clause (iii)(II), the rate of interest on amounts invested conservatively in long-term investment grade corporate bonds shall be determined by the Secretary on the basis of 2 or more indices that are selected periodically by the Secretary. The Secretary shall make publicly available the indices and methodology used to determine the rate.

"(v) VARIABLE RATE OF INTEREST.—If the interest credit rate under the plan is a variable rate, the plan shall provide that, upon the termination of the plan, the rate of interest used to determine accrued bene-

fits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date.

"(C) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' means a defined benefit plan under which—

"(i) the accrued benefit is determined by reference to the balance of a hypothetical accumulation account, and

"(ii) pay credits and interest credits are credited to such account.

"(D) REGULATIONS TO INCLUDE SIMILAR OR OTHER HYBRID PLANS.—

"(i) CASH BALANCE PLAN.—The Secretary shall issue regulations which include in the definition of cash balance plan any defined benefit plan (or any portion of such a plan) which has an effect similar to a cash balance plan. Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding

sentence, such plan shall be treated as a cash balance plan.

"(ii) QUALIFIED CASH BALANCE PLAN.—The Secretary may in the regulations issued under clause (i) provide for the treatment of a cash balance plan as a qualified cash balance plan in cases where the cash balance plan has an effect similar to the qualified cash balance plan.".

(b) RULES APPLICABLE TO ACCRUED BENEFITS UNDER CONVERTED PLANS.—

(1) AMENDMENT OF ERISA.—Section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) is amended by adding at the end the following new paragraph:

"(6) TREATMENT OF CONVERSIONS TO CASH BALANCE OR OTHER HYBRID PLANS.—

"(A) IN GENERAL.—For purposes of this subsection, an applicable plan amendment shall be treated as reducing the accrued benefit of a participant if, under the terms of the plan as in effect after the amendment, the accrued benefit of any participant who was a participant as of the effective date of the amendment may at any time be less than the accrued benefit deter-

mined under the method under subparagraph (B), (C), or (D) which is specified in the plan and applies uniformly to all participants. An applicable plan amendment shall in no event be treated as meeting the requirements of any such subparagraph if the conversion described in subparagraph (G)(i) is into a cash balance plan other than a qualified cash balance plan (as defined in subsection (b)(5)(B)).

"(B) NO WEARAWAY.—

"(i) IN GENERAL.—The accrued benefit determined under this subparagraph is the sum of—

"(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

"(II) except as provided in clause (ii), the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

"(ii) REQUIRED AMOUNTS FOR CERTAIN PERIODS.—Notwithstanding clause (i)(II), the plan shall provide that either—

"(I) the accrued benefit of all participants for each of the first 5 plan years to which the amendment applies shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment, or

"(II) the accrued benefit for periods after the effective date of the amendment of all participants who, as of the effective date of the amendment, had attained the age of 40 and had a combined age and years of service under the plan of not less than 55 shall be determined under either of the methods described in clause (iii) which is selected by the plan and which is specified in the amendment.

"(iii) APPLICABLE METHOD.—For purposes of clause (ii)(II), the plan shall select 1 of the following methods:

"(I) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

"(II) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

"(C) GREATER OF OLD OR NEW OR ELECTION OF EITHER.—The accrued benefit determined under this subparagraph is the accrued benefit determined under 1 of the following methods which is selected by the plan and which is specified in the amendment:

"(i) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

"(ii) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

"(D) METHOD PRESCRIBED BY SECRETARY.—The accrued benefit determined under this subparagraph shall be determined under regulations prescribed by the Secretary which are consistent with the purposes of this paragraph and which may require a plan to provide a credit of additional amounts or increases in initial account balances in amounts substantially equivalent to the benefits that would be required to be provided to meet the requirements of subparagraphs (B) or (C).

"(E) INCLUSION OF PRIOR ACCRUED BENEFIT INTO INITIAL ACCOUNT BALANCE.—

"(i) IN GENERAL.—If, for purposes of subparagraphs (B), (C), or (D), an applicable plan amendment provides that an amount will be initially credited to a participant's accumulation account (or its equivalent) on the effective date of the amendment with respect to the participant's accrued benefit for periods before such date, the requirements of such subparagraph shall be treated as met with respect to such accrued benefit if the amount initially credited is not less than the

present value of the participant's accrued benefit determined by using the applicable mortality table and the lower of the applicable interest rate under section 205(g)(3)(A), or the interest rate used to credit interest under the plan, as of such date.

"(ii) ADJUSTMENTS FOR CERTAIN SUBSIDIZED BENEFITS.—For purposes of subparagraph (B), if any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (6)(B)(i)) is not included in the initial account balance under clause (i), the plan shall credit the accumulation account with the amount of such benefit or subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

"(F) REQUIREMENTS WHERE PARTICIPANT OFFERED CHOICE.—If a plan provides a participant with an election described in subparagraph

(B)(iii)(II) or (C)(ii), the following rules shall apply:

"(i) NOTICE.—The plan shall not be treated as meeting the requirements of either such subparagraph unless the plan provides the participant a notice of the right to make such election which includes information (meeting such requirements as may be prescribed by the Secretary of the Treasury)—

"(I) by which the participant may project benefits under the formulas from which the participant may choose and may model the impact of any such choice, and

"(II) with respect to circumstances under which a participant may not receive the projected accrued benefits by reason of a plan termination or otherwise.

"(ii) SIGNIFICANT REDUCTION OF RATE OF ACCRUAL.—The plan shall provide that if, during any of the first 5 plan years during which such an election is in effect, the plan adopts an amendment

which results in a significant reduction in the rate of future benefit accrual (within the meaning of section 204(h)), the accrued benefit of the participant shall be determined as if the participant had made the election which resulted in the greatest accrued benefit.

"(iii) BENEFITS MUST NOT BE CONTINGENT ON ELECTION.—The plan shall not be treated as meeting the requirements of either such subparagraph if any other benefit is conditioned (directly or indirectly) on such election.

"(G) APPLICABLE PLAN AMENDMENT.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable plan amendment' means an amendment to a defined benefit plan which has the effect of converting the plan to a cash balance plan.

"(ii) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of

the adoption of an amendment described in clause (i), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

''(iii) MULTIPLE AMENDMENTS.—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this paragraph through the use of 2 or more plan amendments rather than a single amendment.

''(iv) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' has the meaning given such term by subsection (b)(5)(C).

''(v) COORDINATION WITH ACCRUAL RULES.—If a plan amendment is treated as meeting the requirements of this paragraph with respect to any participant because such participant is eligible to continue to accrue benefits in the same manner as under the terms of the plan in effect before the amendment, the Secretary of the Treasury shall prescribe regulations

under which the plan shall not be treated as failing to meet the requirements of subparagraph (A), (B), or (C) of section 204(b)(1) if the requirements of this paragraph are met.

"(H) APPLICATION OF CERTAIN RULES TO EARLY-RETIREMENT BENEFITS.—Rules similar to the rules of clauses (i), (ii), and (iii) of subparagraph (B) and subparagraph (C) shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 204(g)(2)(A)).".

(2) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(d) of the Internal Revenue Code of 1986 (relating to special rules) is amended by adding at the end the following new paragraph:

"(7) TREATMENT OF CONVERSIONS TO CASH BALANCE OR OTHER HYBRID PLANS.—

"(A) IN GENERAL.—For purposes of paragraph (6), an applicable plan amendment shall be treated as reducing the accrued benefit of a participant if, under the terms of the plan as in effect after the amendment, the accrued benefit of any participant who was a participant as of the effective date of the amendment may at any

time be less than the accrued benefit determined under the method under subparagraph (B), (C), or (D) which is specified in the plan and applies uniformly to all participants. An applicable plan amendment shall in no event be treated as meeting the requirements of any such subparagraph if the conversion described in subparagraph (G)(i) is into a cash balance plan other than a qualified cash balance plan (as defined in subsection (b)(5)(B)).

"(B) NO WEARAWAY.—

"(i) IN GENERAL.—The accrued benefit determined under this subparagraph is the sum of—

"(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

"(II) except as provided in clause (ii), the participant's accrued benefit for years of service after the effective date of the amendment, determined

under the terms of the plan as in effect after the amendment.

A similar rule shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)).

"(ii) REQUIRED AMOUNTS FOR CERTAIN PERIODS.—Notwithstanding clause (i)(II), the plan shall provide that either—

"(I) the accrued benefit of all participants for each of the first 5 plan years to which the amendment applies shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment, or

"(II) the accrued benefit for periods after the effective date of the amendment of all participants who, as of the effective date of the amendment, had attained the age of 40 and had a combined age and years of service under the plan of not less than 55 shall be determined under either of the methods described in clause (iii)

which is selected by the plan and which is specified in the amendment.

"(iii) APPLICABLE METHOD.—For purposes of clause (ii)(II), the plan shall select 1 of the following methods:

"(I) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

"(II) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

"(C) GREATER OF OLD OR NEW OR ELECTION OF EITHER.—The accrued benefit determined under this subparagraph is the accrued benefit determined under 1 of the following methods which is selected by the plan and which is specified in the amendment:

"(i) The accrued benefit shall be equal to the greater of the accrued benefit determined under the terms of the plan as in effect both before and after the amendment.

"(ii) At the election of the participant, the accrued benefit shall be determined under the terms of the plan as in effect either before or after the amendment.

"(D) METHOD PRESCRIBED BY SECRETARY.—The accrued benefit determined under this subparagraph shall be determined under regulations prescribed by the Secretary which are consistent with the purposes of this paragraph and which may require a plan to provide a credit of additional amounts or increases in initial account balances in amounts substantially equivalent to the benefits that would be required to be provided to meet the requirements of subparagraphs (B) or (C).

"(E) INCLUSION OF PRIOR ACCRUED BENEFIT INTO INITIAL ACCOUNT BALANCE.—

"(i) IN GENERAL.—If, for purposes of subparagraphs (B), (C), or (D), an applicable plan amendment provides that an amount will be initially credited to a participant's accumulation account (or its equivalent) on the effective date of the amendment with respect to the participant's accrued benefit for periods before

such date, the requirements of such subparagraph shall be treated as met with respect to such accrued benefit if the amount initially credited is not less than the present value of the participant's accrued benefit determined by using the applicable mortality table and the lower of the applicable interest rate under section 417(e)(3)(A), or the interest rate used to credit interest under the plan, as of such date.

''(ii) ADJUSTMENTS FOR CERTAIN SUBSIDIZED BENEFITS.—For purposes of subparagraph (B), if any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (6)(B)(i)) is not included in the initial account balance under clause (i), the plan shall credit the accumulation account with the amount of such benefit or subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

"(F) REQUIREMENTS WHERE PARTICIPANT OFFERED CHOICE.—If a plan provides a participant with an election described in subparagraph (B)(iii)(II) or (C)(ii), the following rules shall apply:

"(i) NOTICE.—The plan shall not be treated as meeting the requirements of either such subparagraph unless the plan provides the participant a notice of the right to make such election which includes information (meeting such requirements as may be prescribed by the Secretary)—

"(I) by which the participant may project benefits under the formulas from which the participant may choose and may model the impact of any such choice, and

"(II) with respect to circumstances under which a participant may not receive the projected accrued benefits by reason of a plan termination or otherwise.

"(ii) SIGNIFICANT REDUCTION OF RATE OF ACCRUAL.—The plan shall provide that if, during any of the first 5 plan

years during which such an election is in effect, the plan adopts an amendment which results in a significant reduction in the rate of future benefit accrual (within the meaning of section 4980F(e)), the accrued benefit of the participant shall be determined as if the participant had made the election which resulted in the greatest accrued benefit.

"(iii) BENEFITS MUST NOT BE CONTINGENT ON ELECTION.—The plan shall not be treated as meeting the requirements of either such subparagraph if any other benefit is conditioned (directly or indirectly) on such election.

"(G) APPLICABLE PLAN AMENDMENT.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable plan amendment' means an amendment to a defined benefit plan which has the effect of converting the plan to a cash balance plan.

"(ii) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or

maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in clause (i), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

"(iii) MULTIPLE AMENDMENTS.—The Secretary shall issue regulations to prevent the avoidance of the purposes of this paragraph through the use of 2 or more plan amendments rather than a single amendment.

"(iv) CASH BALANCE PLAN.—For purposes of this paragraph, the term 'cash balance plan' has the meaning given such term by subsection (b)(5)(C).

"(v) COORDINATION WITH ACCRUAL AND NONDISCRIMINATION RULES.—If a plan amendment is treated as meeting the requirements of this paragraph with respect to any participant because such participant is eligible to continue to accrue benefits in the same manner as under the

terms of the plan in effect before the amendment, the Secretary shall prescribe regulations under which—

"(I) the plan shall not be treated as failing to meet the requirements of subparagraph (A), (B), or (C) of section 411(b)(1) if the requirements of this paragraph are met, and

"(II) the plan shall, subject to such terms and conditions as may be provided in such regulations, not be treated as failing to meet the requirements of section 401(a)(4) merely because the plan provides any accrual or benefit which is required to be provided under subparagraph (B), (C), or (D) or because only participants as of the effective date of the amendment are so eligible, except that this subclause shall only apply if the plan met the requirements of section 401(a)(4) under the terms of the plan as in effect before the amendment.

"(H) APPLICATION OF CERTAIN RULES TO EARLY-RETIREMENT BENEFITS.—Rules similar

to the rules of clauses (i), (ii), and (iii) of subparagraph (B) and subparagraph (C) shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)).''.

(c) ASSUMPTIONS USED IN COMPUTING PRESENT VALUE OF ACCRUED BENEFIT.—

(1) AMENDMENT OF ERISA.—Section 205(g)(3) of such Act (29 U.S.C. 1055(g)(3)), is amended—

(A) by striking ''or (B)'' in subparagraph (A)(i) and inserting '', (B), or (C)'', and

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

''(C) PRESENT VALUE OF ACCRUED BENEFIT UNDER CASH BALANCE PLAN.—Except as provided in regulations, in the case of a qualified cash balance plan (as defined in section 204(g)(6)(B)), the present value of the accrued benefit of any participant shall, for purposes of paragraphs (1) and (2), be equal to the balance in the participant's accumulation account (or its equivalent) as of the time the present value determination is being made.''.

(2) AMENDMENT OF INTERNAL REVENUE CODE.—Section 417(e)(3) of such Code, is amended—

(A) by striking ''or (B)'' in subparagraph (A)(i) and inserting '', (B), or (C)'', and

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

''(C) PRESENT VALUE OF ACCRUED BENEFIT UNDER CASH BALANCE PLAN.—Except as provided in regulations, in the case of a qualified cash balance plan (as defined in section 411(d)(7)(B)), the present value of the accrued benefit of any participant shall, for purposes of paragraphs (1) and (2), be equal to the balance in the participant's accumulation account (or its equivalent) as of the time the present value determination is being made.''

(d) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of cash balance plans or conversions to cash balance plans under sections 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974, 4(i)(1) of the Age Discrimination in Employment Act of 1967, and 411(b)(1)(H) of the Internal Revenue Code of 1986, as in effect before such amendments.

(e) EFFECTIVE DATES.—

(1) AGE DISCRIMINATION AND LUMP-SUM DISTRIBUTIONS.—

(A) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to periods after July 31, 2005.

(B) VESTING AND INTEREST CREDIT REQUIREMENTS.—In the case of a plan in existence on July 31, 2005, the requirements of clauses (ii) and (iii) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, and of clauses (ii) and (iii) of 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 shall, for purposes of applying the amendments made by subsections (a) and (c), apply to years beginning after December 31, 2006, unless the plan sponsor elects the application of such requirements for any period after July 31, 2005, and before the first year beginning after December 31, 2006.

(C) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified

on or before the date of the enactment of this Act, the requirements described in subparagraph (B) shall, for purposes of applying the amendments made by subsections (a) and (c), not apply to plan years beginning before—

(i) the earlier of—

(I) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

(II) January 1, 2007, or

(ii) January 1, 2009.

(2) CONVERSIONS.—The amendments made by subsection (b) shall apply to plan amendments adopted after, and taking effect after, July 31, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect after, such date.

SEC. 602. REGULATIONS RELATING TO MERGERS AND ACQUISITIONS.

The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act, prescribe regulations for the application of the amendments made by, and the provisions of, this title in

cases where the conversion of a plan to a cash balance plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction.

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

SEC. 701. DEFINED CONTRIBUTION PLANS REQUIRED TO PROVIDE EMPLOYEES WITH FREEDOM TO INVEST THEIR PLAN ASSETS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans), as amended by section 115 of this Act, is amended by inserting after paragraph (34) the following new paragraph:

"(35) DIVERSIFICATION REQUIREMENTS FOR CERTAIN DEFINED CONTRIBUTION PLANS.—

"(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the

1 plan meets the diversification requirements of
2 subparagraphs (B), (C), and (D).
3 "(B) EMPLOYEE CONTRIBUTIONS AND
4 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
5 SECURITIES OR REAL PROPERTY.—In the case
6 of the portion of an applicable individual's ac-
7 count attributable to employee contributions
8 and elective deferrals which is invested in em-
9 ployer securities or employer real property, a
10 plan meets the requirements of this subpara-
11 graph if the applicable individual may elect to
12 direct the plan to divest any such securities or
13 real property and to reinvest an equivalent
14 amount in other investment options meeting the
15 requirements of subparagraph (D).
16 "(C) EMPLOYER CONTRIBUTIONS IN-
17 VESTED IN EMPLOYER SECURITIES OR REAL
18 PROPERTY.—In the case of the portion of the
19 account attributable to employer contributions
20 other than elective deferrals which is invested in
21 employer securities or employer real property, a
22 plan meets the requirements of this subpara-
23 graph if each applicable individual who—
24 "(i) is a participant who has com-
25 pleted at least 3 years of service, or

"(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

"(D) INVESTMENT OPTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities or employer real property, to which an applicable individual may direct the proceeds from the divestment of employer securities or employer real property pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

"(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

"(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely be-

cause the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

"(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities or employer real property which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

"(E) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'applicable defined contribution plan' means any defined contribution plan which holds any publicly traded employer securities.

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

"(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

"(II) such plan is a separate plan for purposes of section 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

"(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

"(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), the term 'one-participant retirement plan' means a retirement plan that—

"(I) on the first day of the plan year covered only one individual (or the individual and the individual's spouse) and the individual owned 100

1 percent of the plan sponsor (whether
2 or not incorporated), or covered only
3 one or more partners (or partners and
4 their spouses) in the plan sponsor,
5 ''(II) meets the minimum cov-
6 erage requirements of section 410(b)
7 without being combined with any
8 other plan of the business that covers
9 the employees of the business,
10 ''(III) does not provide benefits
11 to anyone except the individual (and
12 the individual's spouse) or the part-
13 ners (and their spouses),
14 ''(IV) does not cover a business
15 that is a member of an affiliated serv-
16 ice group, a controlled group of cor-
17 porations, or a group of businesses
18 under common control, and
19 ''(V) does not cover a business
20 that uses the services of leased em-
21 ployees (within the meaning of section
22 414(n)).
23 For purposes of this clause, the term 'part-
24 ner' includes a 2-percent shareholder (as

1 defined in section 1372(b)) of an S cor-
2 poration.
3 "(F) CERTAIN PLANS TREATED AS HOLD-
4 ING PUBLICLY TRADED EMPLOYER SECURI-
5 TIES.—
6 "(i) IN GENERAL.—Except as pro-
7 vided in regulations or in clause (ii), a plan
8 holding employer securities which are not
9 publicly traded employer securities shall be
10 treated as holding publicly traded employer
11 securities if any employer corporation, or
12 any member of a controlled group of cor-
13 porations which includes such employer
14 corporation, has issued a class of stock
15 which is a publicly traded employer secu-
16 rity.
17 "(ii) EXCEPTION FOR CERTAIN CON-
18 TROLLED GROUPS WITH PUBLICLY TRAD-
19 ED SECURITIES.—Clause (i) shall not
20 apply to a plan if—
21 "(I) no employer corporation, or
22 parent corporation of an employer
23 corporation, has issued any publicly
24 traded employer security, and

"(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

"(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

"(I) 'controlled group of corporations' has the meaning given such term by section 1563(a), except that '50 percent' shall be substituted for '80 percent' each place it appears,

"(II) 'employer corporation' means a corporation which is an employer maintaining the plan, and

"(III) 'parent corporation' has the meaning given such term by section 424(e).

"(G) OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

"(I) any participant in the plan, and

"(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

"(ii) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A).

"(iii) EMPLOYER SECURITY.—The term 'employer security' has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

"(iv) EMPLOYER REAL PROPERTY.—The term 'employer real property' has the meaning given such term by section 407(d)(2) of the Employee Retirement Income Security Act of 1974.

"(v) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock owner-

ship plan' has the meaning given such term by section 4975(e)(7).

"(vi) PUBLICLY TRADED EMPLOYER SECURITIES.—The term 'publicly traded employer securities' means employer securities which are readily tradable on an established securities market.

"(vii) YEAR OF SERVICE.—The term 'year of service' has the meaning given such term by section 411(a)(5).

"(H) TRANSITION RULE FOR SECURITIES OR REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

"(i) RULES PHASED IN OVER 3 YEARS.—

"(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities or employer real property acquired in a plan year beginning before January 1, 2006, subparagraph (C) shall only apply to the applicable percentage of such securities or real property. This subparagraph shall be applied sepa-

rately with respect to each class of securities and employer real property.

"(II) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

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

(2) CONFORMING AMENDMENTS.—

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

"(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E))."

(B) Section 409(h)(7) of such Code is amended by inserting ''or subparagraph (B) or (C) of section 401(a)(35)'' before the period at the end.

(C) Section 4980(c)(3)(A) of such Code is amended by striking ''if—'' and all that follows and inserting ''if the requirements of subparagraphs (B), (C), and (D) are met.''

(b) AMENDMENTS OF ERISA.—

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

''(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN INDIVIDUAL ACCOUNT PLANS.—

''(1) IN GENERAL.—An applicable individual account plan shall meet the diversification requirements of paragraphs (2), (3), and (4).

''(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities or em-

ployer real property, a plan meets the requirements of this paragraph if the applicable individual may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

"(3) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this paragraph if each applicable individual who—

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

"(B) is a beneficiary of a participant described in subparagraph (A) or of a deceased participant,

may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

"(4) INVESTMENT OPTIONS.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the plan offers not

less than 3 investment options, other than employer securities or employer real property, to which an applicable individual may direct the proceeds from the divestment of employer securities or employer real property pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

"(B) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

"(i) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

"(ii) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this paragraph if the plan imposes restrictions or conditions with respect to the investment of employer securities or employer real property which are not imposed on the investment of other

assets of the plan. This subparagraph shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

"(5) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable individual account plan' means any individual account plan (as defined in section 3(34)) which holds any publicly traded employer securities.

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

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

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

"(C) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term shall not include a one-par-

ticipant retirement plan (as defined in section 101(i)(8)(B)).

"(D) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

"(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

"(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

"(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

1 "(II) no employer corporation, or
2 parent corporation of an employer
3 corporation, has issued any special
4 class of stock which grants particular
5 rights to, or bears particular risks for,
6 the holder or issuer with respect to
7 any corporation described in clause (i)
8 which has issued any publicly traded
9 employer security.
10 "(iii) DEFINITIONS.—For purposes of
11 this subparagraph, the term—
12 "(I) 'controlled group of corpora-
13 tions' has the meaning given such
14 term by section 1563(a) of the Inter-
15 nal Revenue Code of 1986, except
16 that '50 percent' shall be substituted
17 for '80 percent' each place it appears,
18 "(II) 'employer corporation'
19 means a corporation which is an em-
20 ployer maintaining the plan, and
21 "(III) 'parent corporation' has
22 the meaning given such term by sec-
23 tion 424(e) of such Code.
24 "(6) OTHER DEFINITIONS.—For purposes of
25 this paragraph—

"(A) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

"(i) any participant in the plan, and

"(ii) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

"(B) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) of the Internal Revenue Code of 1986.

"(C) EMPLOYER SECURITY.—The term 'employer security' has the meaning given such term by section 407(d)(1).

"(D) EMPLOYER REAL PROPERTY.—The term 'employer real property' has the meaning given such term by section 407(d)(2).

"(E) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7) of such Code.

"(F) PUBLICLY TRADED EMPLOYER SECURITIES.—The term 'publicly traded employer securities' means employer securities which are

readily tradable on an established securities market.

"(G) YEAR OF SERVICE.—The term 'year of service' has the meaning given such term by section 203(b)(2).

"(7) TRANSITION RULE FOR SECURITIES OR REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

"(A) RULES PHASED IN OVER 3 YEARS.—

"(i) IN GENERAL.—In the case of the portion of an account to which paragraph (3) applies and which consists of employer securities or employer real property acquired in a plan year beginning before January 1, 2006, paragraph (3) shall only apply to the applicable percentage of such securities or real property. This subparagraph shall be applied separately with respect to each class of securities and employer real property.

"(ii) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of serv-

ice before the first plan year beginning after December 31, 2005.

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

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

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

"(D) For diversification requirements for qualifying employer securities and qualifying real property held in certain individual account plans, see section 204(j)."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals cov-

1 ered by, any such agreement by substituting for
2 "December 31, 2005" the earlier of—
3 (A) the later of—
4 (i) December 31, 2006, or
5 (ii) the date on which the last of such
6 collective bargaining agreements termi-
7 nates (determined without regard to any
8 extension thereof after such date of enact-
9 ment), or
10 (B) December 31, 2007.
11 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-
12 CURITIES HELD IN AN ESOP.—
13 (A) IN GENERAL.—In the case of employer
14 securities to which this paragraph applies, the
15 amendments made by this section shall apply to
16 plan years beginning after the earlier of—
17 (i) December 31, 2006, or
18 (ii) the first date on which the fair
19 market value of such securities exceeds the
20 guaranteed minimum value described in
21 subparagraph (B)(ii).
22 (B) APPLICABLE SECURITIES.—This para-
23 graph shall apply to employer securities which
24 are attributable to employer contributions other

than elective deferrals, and which, on September 17, 2003—

(i) consist of preferred stock, and

(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

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

SEC. 702. NOTICE OF FREEDOM TO DIVEST EMPLOYER SECURITIES OR REAL PROPERTY.

(a) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021), as amended by this Act, is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

"(m) NOTICE OF RIGHT TO DIVEST.—Not later than 30 days before the first date on which an applicable individual of an applicable individual account plan is eligible to exercise the right under section 204(j) to direct the proceeds from the divestment of employer securities or employer real property with respect to any type of contribution, the administrator shall provide to such individual a notice—

"(1) setting forth such right under such section, and

"(2) describing the importance of diversifying the investment of retirement account assets.

The notice required by this subsection shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to the recipient."

(b) PENALTIES.—Section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(7)) is amended by striking "section 101(i)" and inserting "subsection (i) or (m) of section 101".

(c) MODEL NOTICE.—The Secretary of the Treasury shall, within 180 days after the date of the enactment of this subsection, prescribe a model notice for purposes of

1 satisfying the requirements of the amendments made by
2 this section.
3 (d) EFFECTIVE DATES.—
4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to plan years beginning after
6 December 31, 2005.
7 (2) TRANSITION RULE.—If notice under section
8 101(m) of the Employee Retirement Income Secu-
9 rity Act of 1974 (as added by this section) would
10 otherwise be required to be provided before the 90th
11 day after the date of the enactment of this Act, such
12 notice shall not be required to be provided until such
13 90th day.
14 **SEC. 703. PERIODIC PENSION BENEFIT STATEMENTS.**
15 (a) AMENDMENTS OF ERISA.—
16 (1) IN GENERAL.—Section 105(a) of the Em-
17 ployee Retirement Income Security Act of 1974 (29
18 U.S.C. 1025(a)) is amended to read as follows:
19 ''(a) REQUIREMENTS TO PROVIDE PENSION BEN-
20 EFIT STATEMENTS.—
21 ''(1) REQUIREMENTS.—
22 ''(A) INDIVIDUAL ACCOUNT PLAN.—The
23 administrator of an individual account plan
24 (other than a one-participant retirement plan

1 described in section 101(i)(8)(B)) shall furnish
2 a pension benefit statement—
3 "(i) at least once each calendar quar-
4 ter to a participant or beneficiary who has
5 the right to direct the investment of assets
6 in his or her account under the plan,
7 "(ii) at least once each calendar year
8 to a participant or beneficiary who has his
9 or her own account under the plan but
10 does not have the right to direct the invest-
11 ment of assets in that account, and
12 "(iii) upon written request to a plan
13 beneficiary not described in clause (i) or
14 (ii).
15 "(B) DEFINED BENEFIT PLAN.—The ad-
16 ministrator of a defined benefit plan (other
17 than a one-participant retirement plan de-
18 scribed in section 101(i)(8)(B)) shall furnish a
19 pension benefit statement—
20 "(i) at least once every 3 years to
21 each participant with a nonforfeitable ac-
22 crued benefit and who is employed by the
23 employer maintaining the plan at the time
24 the statement is to be furnished, and

"(ii) to a participant or beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

"(2) STATEMENTS.—

"(A) IN GENERAL.—A pension benefit statement under paragraph (1)—

"(i) shall indicate, on the basis of the latest available information—

"(I) the total benefits accrued, and

"(II) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

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

"(iii) shall be written in a manner calculated to be understood by the average plan participant, and

"(iv) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.

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

"(i) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities or employer real property, without regard to whether such securities or real property were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and

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

"(I) an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment, and

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

"(C) ALTERNATIVE NOTICE.—The requirements of subparagraph (A)(i)(II) are met if, at least annually and in accordance with requirements of the Secretary, the plan—

"(i) updates the information described in such paragraph which is provided in the pension benefit statement, or

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

"(3) DEFINED BENEFIT PLANS.—

"(A) ALTERNATIVE NOTICE.—In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met

with respect to a participant if at least once each year the administrator provides to the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant.

"(B) YEARS IN WHICH NO BENEFITS ACCRUE.—The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i)."

(2) CONFORMING AMENDMENTS.—

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

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

"(b) LIMITATION ON NUMBER OF STATEMENTS.—In no case shall a participant or beneficiary of a plan be entitled to more than 1 statement described in subparagraph

(A)(iii) or (B)(ii) of subsection (a)(1), whichever is applicable, in any 12-month period.''

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

(b) MODEL STATEMENTS.—

(1) IN GENERAL.—The Secretary of Labor shall, within 180 days after the date of the enactment of this section, develop 1 or more model benefit statements that are written in a manner calculated to be understood by the average plan participant and that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974.

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

(d) EFFECTIVE DATE.—

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

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan main-

tained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for "December 31, 2006" the earlier of—

(A) the later of—

(i) December 31, 2007, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2008.

SEC. 704. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF BLACKOUT PERIODS.

(a) AMENDMENTS OF ERISA.—

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

(A) by striking clauses (i) through (iv) of paragraph (8)(B) and inserting:

"(i) on the first day of the plan year—

"(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

"(II) covered only one or more partners (or partners and their spouses) in the plan sponsor, and", and

(B) in paragraph (8)(B), by redesignating clause (v) as clause (ii).

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

SEC. 705. ALLOWANCE OF, AND CREDIT FOR, ADDITIONAL IRA PAYMENTS IN CERTAIN BANKRUPTCY CASES.

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

"(C) CATCHUP CONTRIBUTIONS FOR CERTAIN INDIVIDUALS.—

"(i) IN GENERAL.—In the case of an applicable individual who elects to make a qualified retirement contribution in addition to the deductible amount determined under subparagraph (A)—

"(I) the deductible amount for any taxable year shall be increased by an amount equal to 3 times the applicable amount determined under subparagraph (B) for such taxable year, and

"(II) subparagraph (B) shall not apply.

"(ii) APPLICABLE INDIVIDUAL.—For purposes of this subparagraph, the term 'applicable individual' means, with respect to any taxable year, any individual who was a qualified participant in a qualified cash or deferred arrangement (as defined in section 401(k)) of an employer described in clause (iii) under which the employer matched at least 50 percent of the employ-

1 ee's contributions to such arrangement
2 with stock of such employer.
3 "(iii) EMPLOYER DESCRIBED.—An
4 employer is described in this clause if, in
5 any taxable year preceding the taxable year
6 described in clause (ii)—
7 "(I) such employer (or any con-
8 trolling corporation of such employer)
9 was a debtor in a case under title 11
10 of the United States Code, or similar
11 Federal or State law, and
12 "(II) such employer (or any other
13 person) was subject to an indictment
14 or conviction resulting from business
15 transactions related to such case.
16 "(iv) QUALIFIED PARTICIPANT.—For
17 purposes of clause (ii), the term 'qualified
18 participant' means any applicable indi-
19 vidual who was a participant in the cash or
20 deferred arrangement described in clause
21 (i) on the date that is 6 months before the
22 filing of the case described in clause (iii).
23 "(v) TERMINATION.—This subpara-
24 graph shall not apply to taxable years be-
25 ginning after December 31, 2009."

(b) SAVER'S CREDIT EXPANDED TO INCLUDE CATCHUP CONTRIBUTIONS.—

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

''(h) ADDITIONAL CREDIT FOR CERTAIN CATCHUP CONTRIBUTIONS.—

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

''(2) COORDINATION WITH OTHER CONTRIBUTIONS.—For purposes of this section—

''(A) any contribution to which this subsection applies shall not be taken into account in determining the amount of the credit allow-

able under subsection (a) without regard to this subsection, and

"(B) in applying any reduction in qualified retirement savings contributions under subsection (d)(2), the reduction shall be applied first to qualified retirement savings contributions other than contributions to which this subsection applies.".

(2) EXTENSION OF TERMINATION DATE FOR CATCHUP CREDIT.—Section 25B(i) of such Code, as redesignated by paragraph (1), is amended by inserting "(December 31, 2007, in the case of the portion of the credit allowed under subsection (h))" after "2006".

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

SEC. 706. INAPPLICABILITY OF RELIEF FROM FIDUCIARY LIABILITY DURING SUSPENSION OF ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS.

(a) IN GENERAL.—Section 404(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(1)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by inserting ''(A)'' after ''(c)(1)'',

(2) in subparagraph (A)(ii) (as redesignated by paragraph (1)), by inserting before the period the following: '', except that this clause shall not apply in connection with such participant or beneficiary for any blackout period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary'', and

(3) by adding at the end the following new subparagraphs:

''(B)(i) If a person referred to in subparagraph (A)(ii) meets the requirements of this title in connection with authorizing and implementing the blackout period, any person who is otherwise a fiduciary shall not be liable under this title for any loss occurring during such period as a result of any exercise by the participant or beneficiary of control over assets in his or her account before the period. Matters to be considered in determining whether such person has satisfied the requirements of this title include, but are not limited to, whether such person—

''(I) has considered the reasonableness of the expected blackout period,

1 "(II) has provided the notice required under
2 section 101(i)(1), and
3 "(III) has acted in accordance with the require-
4 ments of subsection (a) in determining whether to
5 enter into the blackout period.
6 "(ii) For purposes of this subsection, if a blackout
7 period arises in connection with a change in the invest-
8 ment options offered under the plan, a participant or bene-
9 ficiary shall be deemed to have exercised control over the
10 assets in his or her account prior to the blackout period
11 if, after notice of the change in investment options is given
12 to such participant or beneficiary, assets in the account
13 of the participant or beneficiary are transferred—
14 "(I) to plan investment options in accordance
15 with the affirmative election of the participant or
16 beneficiary; or
17 "(II) in the absence of such an election and in
18 the case in which fiduciary relief was provided under
19 this subsection for the prior investment options, to
20 plan investment options in the manner set forth in
21 such notice.
22 "(C) For purposes of this paragraph, the term 'black-
23 out period' has the meaning given such term by section
24 101(i)(7)."

(b) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall issue interim final regulations providing guidance, including safe harbors, on how plan sponsors or any other affected fiduciaries can satisfy their fiduciary responsibilities during any blackout period during which the ability of a participant or beneficiary to direct the investment of assets in his or her individual account is suspended.

(c) EFFECTIVE DATE.—

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

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''December 31, 2005'' the earlier of—

(A) the later of—

(i) December 31, 2006, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2007.

SEC. 707. INCREASE IN MAXIMUM BOND AMOUNT.

(a) IN GENERAL.—Section 412(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112) is amended by adding at the end the following: ''In the case of a plan that holds employer securities (within the meaning of section 407(d)(1)), this subsection shall be applied by substituting '$1,000,000' for '$500,000' each place it appears.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning after December 31, 2005.

TITLE VIII—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

SEC. 801. DEFINED CONTRIBUTION PLANS REQUIRED TO PROVIDE ADEQUATE INVESTMENT EDUCATION TO PARTICIPANTS.

(a) ADEQUATE INVESTMENT EDUCATION.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024), as amended by this Act, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following:

''(n) BASIC INVESTMENT GUIDELINES.—

''(1) IN GENERAL.—The administrator of an individual account plan (other than a one-participant retirement plan described in subsection (i)(8)(B)) shall furnish at least once each year to each participant or beneficiary who has the right to direct the investment of assets in his or her account the model form relating to basic investment guidelines which is described in paragraph (2).

''(2) MODEL FORM.—

''(A) IN GENERAL.—The Secretary shall, in consultation with the Secretary of Treasury, develop and make available to individual account plans for distribution under paragraph (1) a model form containing basic guidelines for investing for retirement. Except as otherwise provided by the Secretary, such guidelines shall include—

''(i) information on the benefits of diversification,

"(ii) information on the essential differences, in terms of risk and return, of pension plan investments, including stocks, bonds, mutual funds, and money market investments,

"(iii) information on how an individual's pension plan investment allocations may differ depending on the individual's age and years to retirement and on other factors determined by the Secretary,

"(iv) sources of information where individuals may learn more about pension rights, individual investing, and investment advice, and

"(v) such other information related to individual investing as the Secretary determines appropriate.

"(B) CALCULATION INFORMATION.—The model form under subparagraph (A) shall include addresses for Internet sites, and a worksheet, which a participant or beneficiary may use to calculate—

"(i) the retirement age value of the participant's or beneficiary's nonforfeitable pension benefits under the plan (expressed

as an annuity amount and determined by reference to varied historical annual rates of return and annuity interest rates), and

"(ii) other important amounts relating to retirement savings, including the amount which a participant or beneficiary would be required to save annually to provide a retirement income equal to various percentages of their current salary (adjusted for expected growth prior to retirement).

The Secretary shall develop an Internet site which an individual may use in making such calculations and the address for such site shall be included with the form.

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

"(3) RULES RELATING TO FORM AND STATEMENT.—The model form under paragraph (2)—

"(A) shall be written in a manner calculated to be understood by the average plan participant, and

"(B) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries."

(2) ENFORCEMENT.—Section 502(c)(7) of such Act (29 U.S.C. 1132(c)(7)), as amended by this Act, is amended by striking "or (l)" and inserting ", (l), or (n)".

(c) EFFECTIVE DATE.—

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

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for "December 31, 2006" the earlier of—

(A) the later of—

(i) December 31, 2007, or

(ii) the date on which the last of such collective bargaining agreements termi-

nates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2008.

SEC. 802. INDEPENDENT INVESTMENT ADVICE PROVIDED TO PLAN PARTICIPANTS.

(a) IN GENERAL.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e) INDEPENDENT INVESTMENT ADVISER.—

''(1) IN GENERAL.—In the case of an individual account plan which permits a plan participant or beneficiary to direct the investment of the assets in his or her account, if a plan sponsor or other person who is a fiduciary designates and monitors a qualified investment adviser pursuant to the requirements of paragraph (3), such fiduciary—

''(A) shall be deemed to have satisfied the requirements under this section for the prudent designation and periodic review of an investment adviser with whom the plan sponsor or other person who is a fiduciary enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii),

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

"(C) shall not be liable for any co-fiduciary liability under subsections (a)(2) and (b) of section 405 with respect to the provision of investment advice given by such adviser to any plan participant or beneficiary.

"(2) QUALIFIED INVESTMENT ADVISER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified investment adviser' means, with respect to a plan, a person—

"(i) who is a fiduciary of the plan by reason of the provision of investment advice by such person to a plan participant or beneficiary;

"(ii) who—

"(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),

"(II) is registered as an investment adviser under the laws of the

State in which such adviser maintains the principal office and place of business of such adviser, but only if such State laws are consistent with section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a),

"(III) is a bank or similar financial institution referred to in section 408(b)(4),

"(IV) is an insurance company qualified to do business under the laws of a State, or

"(V) is any other comparably qualified entity which satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this subsection, and

"(iii) who meets the requirements of subparagraph (B).

"(B) ADVISER REQUIREMENTS.—The requirements of this subparagraph are met if every individual employed (or otherwise compensated) by a person described in subparagraph (A)(ii) who provides investment advice on

behalf of such person to any plan participant or beneficiary is—

"(i) an individual described in subclause (I) of subparagraph (A)(ii),

"(ii) an individual described in subclause (II) of subparagraph (A)(ii), but only if such State has an examination requirement to qualify for registration,

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

"(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or

"(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this subsection.

"(3) VERIFICATION REQUIREMENTS.—The requirements of this paragraph are met if—

"(A) the plan sponsor or other person who is a fiduciary in designating a qualified investment adviser receives at the time of the designation, and annually thereafter, a written verification from the qualified investment adviser that the investment adviser—

"(i) is and remains a qualified investment adviser,

"(ii) acknowledges that the investment adviser is a fiduciary with respect to the plan and is solely responsible for its investment advice,

"(iii) has reviewed the plan documents (including investment options) and has determined that its relationship with the plan and the investment advice provided to any plan participant or beneficiary, including any fees or other compensation it will receive, will not constitute a violation of section 406,

"(iv) will, in providing investment advice to any participant or beneficiary, consider any employer securities or employer real property allocated to his or her account, and

"(v) has the necessary insurance coverage (as determined by the Secretary) for any claim by any plan participant or beneficiary,

"(B) the plan sponsor or other person who is a fiduciary in designating a qualified investment adviser reviews the documents described in paragraph (4) provided by such adviser and determines that there is no material reason not to enter into an arrangement for the provision of advice by such qualified investment adviser, and

"(C) the plan sponsor or other person who is a fiduciary in designating a qualified investment adviser, within 30 days of having information brought to its attention that the investment adviser is no longer qualified or that a substantial number of plan participants or beneficiaries have raised concerns about the services being provided by the investment adviser—

"(i) investigates such information and concerns, and

"(ii) determines that there is no material reason not to continue the designation

of the adviser as a qualified investment adviser.

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

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

"(B) A disclosure as to any fees or other compensation that will be received by the investment adviser for the provision of such investment advice and as to any fees and other compensation that will be received as a result of a participant's investment election.

"(C) The Uniform Application for Investment Adviser Registration as filed with the Securities and Exchange Commission or a substantially similar disclosure application as determined by and filed with the Secretary.

"(5) TREATMENT AS FIDUCIARY.—Any qualified investment adviser that acknowledges it is a fiduciary pursuant to paragraph (3)(A)(ii) shall be deemed a fiduciary under this part with respect to

the provision of investment advice to a plan participant or beneficiary.''

(b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act is amended by inserting ''(other than a qualified investment adviser)'' after ''fiduciary''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to investment advisers designated after the date of the enactment of this Act.

SEC. 803. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

''(4) NO CONSTRUCTIVE RECEIPT.—

''(A) IN GENERAL.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by an eligible investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially

the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

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

"(C) ELIGIBLE INVESTMENT ADVISER.—For purposes of this paragraph, the term 'eligible investment adviser' means, with respect to a plan, a person—

"(i) who—

"(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),

"(II) is registered as an investment adviser under the laws of the State in which such adviser maintains the principal office and place of business of such adviser, but only if such State laws are consistent with section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a),

"(III) is a bank or similar financial institution referred to in section 408(b)(4),

"(IV) is an insurance company qualified to do business under the laws of a State, or

"(V) is any other comparably qualified entity which satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this subsection, and

"(ii) who meets the requirements of subparagraph (D).

"(D) ADVISER REQUIREMENTS.—The requirements of this subparagraph are met if every individual employed (or otherwise compensated) by a person described in subparagraph (C)(i) who provides investment advice on behalf of such person to any plan participant or beneficiary is—

"(i) an individual described in subclause (I) of subparagraph (C)(i),

"(ii) an individual described in subclause (II) of subparagraph (C)(i), but

only if such State has an examination requirement to qualify for registration,

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

"(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or

"(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this paragraph.

"(E) TERMINATION.—This paragraph shall not apply to taxable years beginning after December 31, 2010.".

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting "132(m)(4)," after "132(f)(4),".

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

(3) Section 415(c)(3)(D)(ii) of such Code is amended by inserting "132(m)(4)," after "132(f)(4),".

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

SEC. 804. INCREASE IN PENALTIES FOR COERCIVE INTERFERENCE WITH EXERCISE OF ERISA RIGHTS.

(a) IN GENERAL.—Section 511 of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1141) is amended—

(1) by striking "$10,000" and inserting "$100,000", and

(2) by striking "one year" and inserting "10 years".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to violations occurring on and after the date of the enactment of this Act.

SEC. 805. ADMINISTRATIVE PROVISION.

The Secretary of the Treasury shall have the authority to prescribe rules applicable to the statements required under sections 101(j) and 101(m) of the Employee Retirement Income Security Act of 1974 (as added by this Act).

TITLE IX—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

SEC. 901. REGULATIONS ON TIME AND ORDER OF ISSUANCE OF DOMESTIC RELATIONS ORDERS.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall issue regulations under section 206(d)(3) of the Employee Retirement Security Act of 1974 and section 414(p) of the Internal Revenue Code of 1986 which clarify that—

(1) a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order, including the requirements of section 206(d)(3)(D) of such Act and section 414(p)(3) of such Code, shall not fail to be treated as a qualified domestic relations order solely because—

(A) the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or

(B) of the time at which it is issued; and

(2) any order described in paragraph (1) shall be subject to the same requirements and protections which apply to qualified domestic relations orders,

including the provisions of section 206(d)(3)(H) of such Act and section 414(p)(7) of such Code.

SEC. 902. ENTITLEMENT OF DIVORCED SPOUSES TO RAILROAD RETIREMENT ANNUITIES INDEPENDENT OF ACTUAL ENTITLEMENT OF EMPLOYEE.

(a) IN GENERAL.—Section 2 of the Railroad Retirement Act of 1974 (45 U.S.C. 231a) is amended—

(1) in subsection (c)(4)(i), by striking ''(A) is entitled to an annuity under subsection (a)(1) and (B)''; and

(2) in subsection (e)(5), by striking ''or divorced wife'' the second place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 903. EXTENSION OF TIER II RAILROAD RETIREMENT BENEFITS TO SURVIVING FORMER SPOUSES PURSUANT TO DIVORCE AGREEMENTS.

(a) IN GENERAL.—Section 5 of the Railroad Retirement Act of 1974 (45 U.S.C. 231d) is amended by adding at the end the following:

''(d) Notwithstanding any other provision of law, the payment of any portion of an annuity computed under section 3(b) to a surviving former spouse in accordance with

a court decree of divorce, annulment, or legal separation or the terms of any court-approved property settlement incident to any such court decree shall not be terminated upon the death of the individual who performed the service with respect to which such annuity is so computed unless such termination is otherwise required by the terms of such court decree.''

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 904. REQUIREMENT FOR ADDITIONAL SURVIVOR ANNUITY OPTION.

(a) AMENDMENTS TO INTERNAL REVENUE CODE.—

(1) ELECTION OF SURVIVOR ANNUITY.—Section 417(a)(1)(A) of the Internal Revenue Code of 1986 is amended—

(A) in clause (i), by striking '', and'' and inserting a comma;

(B) by redesignating clause (ii) as clause (iii); and

(C) by inserting after clause (i) the following:

''(ii) if the participant elects a waiver under clause (i), may elect the qualified op-

tional survivor annuity at any time during the applicable election period, and''.

(2) DEFINITION.—Section 417 of such Code is amended by adding at the end the following:

''(g) DEFINITION OF QUALIFIED OPTIONAL SURVIVOR ANNUITY.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified optional survivor annuity' means an annuity—

''(A) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

''(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

''(2) APPLICABLE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of paragraph (1), if the survivor annuity percentage—

''(i) is less than 75 percent, the applicable percentage is 75 percent, and

"(ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

"(B) SURVIVOR ANNUITY PERCENTAGE.—For purposes of subparagraph (A), the term 'survivor annuity percentage' means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.".

(3) NOTICE.—Section 417(a)(3)(A)(i) of such Code is amended by inserting "and of the qualified optional survivor annuity" after "annuity".

(b) AMENDMENTS TO ERISA.—

(1) ELECTION OF SURVIVOR ANNUITY.—Section 205(c)(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is amended—

(A) in clause (i), by striking ", and" and inserting a comma;

(B) by redesignating clause (ii) as clause (iii); and

(C) by inserting after clause (i) the following:

"(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and".

(2) DEFINITION.—Section 205(d) of such Act (29 U.S.C. 1055(d)) is amended—

(A) by inserting "(1)" after "(d)";

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) by adding at the end the following:

"(2)(A) For purposes of this section, the term 'qualified optional survivor annuity' means an annuity—

"(i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

"(ii) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

"(B)(i) For purposes of subparagraph (A), if the survivor annuity percentage—

"(I) is less than 75 percent, the applicable percentage is 75 percent, and

"(II) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

"(ii) For purposes of clause (i), the term 'survivor annuity percentage' means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.".

(3) NOTICE.—Section 205(c)(3)(A)(i) of such Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by inserting "and of the qualified optional survivor annuity" after "annuity".

(c) EFFECTIVE DATES.—

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

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, the amendments made by this section shall apply to the first plan year beginning on or after the earlier of—

(A) the later of—

(i) January 1, 2006, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

(B) January 1, 2007.

TITLE X—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

SEC. 1001. CLARIFICATIONS REGARDING PURCHASE OF PERMISSIVE SERVICE CREDIT.

(a) IN GENERAL.—Section 415(n) of the Internal Revenue Code of 1986 (relating to special rules for the purchase of permissive service credit) is amended—

(1) by striking ''an employee'' in paragraph (1) and inserting ''a participant'', and

(2) by adding at the end of paragraph (3)(A) the following new flush sentence:

''Such term may include service credit for periods for which there is no performance of service, and notwithstanding clause (ii), may include service credited in order to provide an in-

creased benefit for service credit which a participant is receiving under the plan.''

(b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE TRANSFERS.—Section 415(n)(3) of such Code is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE TRANSFERS.—In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

''(i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

''(ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.''.

(c) NONQUALIFIED SERVICE.—Section 415(n)(3) of such Code is amended—

(1) by striking ''permissive service credit attributable to nonqualified service'' each place it appears in subparagraph (B) and inserting ''nonqualified service credit'',

(2) by striking so much of subparagraph (C) as precedes clause (i) and inserting:

''(C) NONQUALIFIED SERVICE CREDIT.—For purposes of subparagraph (B), the term 'nonqualified service credit' means permissive service credit other than that allowed with respect to—'', and

(3) by striking ''elementary or secondary education (through grade 12), as determined under State law'' and inserting ''elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall take effect as if included in the amendments made by section 1526 of the Taxpayer Relief Act of 1997.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect as if included in

the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 1002. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN ANNUITY CONTRACTS.

(a) IN GENERAL.—Subparagraph (A) of section 402(c)(2) (relating to the maximum amount which may be rolled over) is amended—

(1) by striking ''which is part of a plan which is a defined contribution plan and which agrees to separately account'' and inserting ''or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting''; and

(2) by inserting ''(and earnings thereon)'' after ''so transferred''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

SEC. 1003. CLARIFICATION OF MINIMUM DISTRIBUTION RULES FOR GOVERNMENTAL PLANS.

The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such sec-

tion 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).

SEC. 1004. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.

(a) IN GENERAL.—Section 72(t) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions) is amended by adding at the end the following new paragraph:

"(10) DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

"(A) IN GENERAL.—In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting 'age 50' for 'age 55'.

"(B) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this paragraph, the term 'qualified public safety employee' means any employee of a State or political subdivision of a State who provides police protection, firefighting services, or emergency medical services

for any area within the jurisdiction of such State or political subdivision.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 1005. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

''(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

''(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the em-

ployee and who is not the surviving spouse of the employee—

"(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

"(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

"(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

"(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.".

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by striking "and (9)" and inserting ", (9), and (11)".

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

SEC. 1006. FASTER VESTING OF EMPLOYER NONELECTIVE CONTRIBUTIONS.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Paragraph (2) of section 411(a) of the Internal Revenue Code of 1986 (relating to employer contributions) is amended to read as follows:

''(2) EMPLOYER CONTRIBUTIONS.—

''(A) DEFINED BENEFIT PLANS.—

''(i) IN GENERAL.—In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

"(ii) 5-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

"(B) DEFINED CONTRIBUTION PLANS.—

"(i) IN GENERAL.—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

"(ii) 3-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 3

years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(iii) 2 TO 6 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.".

(2) CONFORMING AMENDMENT.—Section 411(a) of such Code (relating to general rule for minimum vesting standards) is amended by striking paragraph (12).

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

1 "(2)(A)(i) In the case of a defined benefit plan,
2 a plan satisfies the requirements of this paragraph
3 if it satisfies the requirements of clause (ii) or (iii).
4 "(ii) A plan satisfies the requirements of this
5 clause if an employee who has completed at least 5
6 years of service has a nonforfeitable right to 100
7 percent of the employee's accrued benefit derived
8 from employer contributions.
9 "(iii) A plan satisfies the requirements of this
10 clause if an employee has a nonforfeitable right to
11 a percentage of the employee's accrued benefit de-
12 rived from employer contributions determined under
13 the following table:

"Years of service:	**The nonforfeitable percentage is:**
3	20
4	40
5	60
6	80
7 or more	100.

14 "(B)(i) In the case of an individual account
15 plan, a plan satisfies the requirements of this para-
16 graph if it satisfies the requirements of clause (ii) or
17 (iii).
18 "(ii) A plan satisfies the requirements of this
19 clause if an employee who has completed at least 3
20 years of service has a nonforfeitable right to 100
21 percent of the employee's accrued benefit derived
22 from employer contributions.

"(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.".

(2) CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2005.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2006; or

(B) January 1, 2008.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

(4) SPECIAL RULE FOR STOCK OWNERSHIP PLANS.—Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code), the amendments made by this section shall not apply to any plan year beginning before the earlier of—

(A) the date on which the loan is fully repaid, or

(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid.

SEC. 1007. ALLOW DIRECT ROLLOVERS FROM RETIREMENT PLANS TO ROTH IRAS.

(a) IN GENERAL.—Subsection (e) of section 408A of the Internal Revenue Code of 1986 (defining qualified rollover contribution) is amended to read as follows:

''(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

''(1) to a Roth IRA from another such account,

''(2) from an eligible retirement plan, but only if—

''(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.''

(b) CONFORMING AMENDMENTS.—

(1) Section 408A(c)(3)(B) of such Code is amended—

(A) in the text by striking ''individual retirement plan'' and inserting ''an eligible retirement plan (as defined by section 402(c)(8)(B))'', and

(B) in the heading by striking ''IRA'' and inserting ''ELIGIBLE RETIREMENT PLAN''.

(2) Section 408A(d)(3) of such Code is amended—

(A) in subparagraph (A), by striking ''section 408(d)(3)'' inserting ''sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)'',

(B) in subparagraph (B), by striking ''individual retirement plan'' and inserting ''eligible retirement plan (as defined by section 402(c)(8)(B))'',

(C) in subparagraph (D), by inserting ''or 6047'' after ''408(i)'',

(D) in subparagraph (D), by striking ''or both'' and inserting ''persons subject to section 6047(d)(1), or all of the foregoing persons'', and

(E) in the heading, by striking ''IRA'' and inserting ''ELIGIBLE RETIREMENT PLAN''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

SEC. 1008. ELIMINATION OF HIGHER PENALTY ON CERTAIN SIMPLE PLAN DISTRIBUTIONS.

(a) IN GENERAL.—Subsection (t) of section 72 of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans), as amended by section 1004, is amended by striking paragraph (6) and redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 72(t)(2)(E) of such Code is amended by striking ''paragraph (7)'' and inserting ''paragraph (6)''.

(2) Section 72(t)(2)(F) of such Code is amended by striking ''paragraph (8)'' and inserting ''paragraph (7)''.

(3) Section 408(d)(3)(G) of such Code is amended by striking ''applies'' and inserting ''applied on the day before the date of the enactment of the Pension Security and Transparency Act of 2005)''.

(4) Section 457(a)(2) of such Code is amended by striking ''section 72(t)(9)'' and inserting ''section 72(t)(8)''.

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

SEC. 1009. SIMPLE PLAN PORTABILITY.

(a) REPEAL OF LIMITATION.—Paragraph (3) of section 408(d) of the Internal Revenue Code of 1986 (relating to rollover contributions), as amended by this Act, is amended by striking subparagraph (G) and redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2005.

SEC. 1010. ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS.

An individual shall not be precluded from participating in an eligible deferred compensation plan by reason

of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996.

SEC. 1011. TRANSFERS TO THE PBGC.

(a) MANDATORY DISTRIBUTIONS TO PBGC.—Clause (i) of section 401(a)(31)(B) of the Internal Revenue Code of 1986 (relating to general rule for certain mandatory distributions) is amended by inserting ''to the Pension Benefit Guaranty Corporation in accordance with section 4050(e) of the Employee Retirement Income Security Act of 1974 or'' after ''such transfer''.

(b) TAX TREATMENT OF DISTRIBUTIONS.—Subparagraph (B) of section 401(a)(31) of such Code is amended by adding at the end the following new clause:

''(iii) INCOME TAX TREATMENT OF TRANSFERS TO PBGC.—For purposes of determining the income tax treatment relating to transfers to the Pension Benefit Guaranty Corporation under clause (i)—

''(I) the transfer of amounts to the Pension Benefit Guaranty Corporation pursuant to clause (i) shall be treated as a transfer to an indi-

vidual retirement plan under such clause, and

"(II) the distribution of such amounts from the Pension Benefit Guaranty Corporation shall be treated as a distribution from an individual retirement plan.".

(c) MISSING PARTICIPANTS AND BENEFICIARIES.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350), as amended by section 1012, is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections:

"(e) INVOLUNTARY CASHOUTS.—

"(1) PAYMENT BY THE CORPORATION.—If benefits under a plan described in paragraph (3) were transferred to the corporation under section 401(a)(31)(B) of the Internal Revenue Code of 1986, the corporation shall, upon application filed by the participant or beneficiary with the corporation in such form and manner as may be prescribed in regulations of the corporation, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

"(A) in a single sum (plus interest), or

"(B) in such other form as is specified in regulations of the corporation.

"(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (3) shall, upon a transfer of benefits to the corporation under section 401(a)(31)(B) of such Code, provide the corporation information with respect to benefits of the participant or beneficiary so transferred.

"(3) PLANS DESCRIBED.—A plan is described in this paragraph if the plan is a pension plan (within the meaning of section 3(2))—

"(A) which provides for mandatory distributions under section 401(a)(31)(B) of the Internal Revenue Code of 1986, and

"(B) which is not a plan described in paragraphs (2) through (11) of section 4021(b).

"(4) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (3).

"(f) AUTHORITY TO CHARGE FEE.—The corporation may charge a reasonable fee for costs incurred in connection with the transfer and management of amounts transferred to the corporation under this section. Such fee may

be imposed on the transferor and may be deducted from amounts so transferred.''.

(d) EFFECTIVE DATES.—

(1) INTERNAL REVENUE CODE PROVISIONS.—The amendments made by subsections (a) and (b) shall take effect as if included in the amendments made by section 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

(2) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVISIONS.—The amendments made by subsection (c) shall apply to distributions made after final regulations implementing subsections (e) and (f) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (c)) are prescribed.

(3) REGULATIONS.—The Pension Benefit Guaranty Corporation shall issue regulations necessary to carry out the amendments made by subsection (c) not later than December 31, 2006.

SEC. 1012. MISSING PARTICIPANTS.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

"(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

"(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

"(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

"(A) to the corporation, or

"(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

"(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

"(A) in a single sum (plus interest), or

"(B) in such other form as is specified in regulations of the corporation.

"(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

"(A) the plan is a pension plan (within the meaning of section 3(2))—

"(i) to which the provisions of this section do not apply (without regard to this subsection), and

"(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

"(B) at the time the assets are to be distributed upon termination, the plan—

"(i) has missing participants, and

"(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

"(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).".

(b) CONFORMING AMENDMENTS.—Section 206(f) of such Act (29 U.S.C. 1056(f)) is amended—

(1) by striking ''title IV'' and inserting ''section 4050''; and

(2) by striking ''the plan shall provide that,''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

SEC. 1013. MODIFICATIONS OF RULES GOVERNING HARDSHIPS AND UNFORSEEN FINANCIAL EMERGENCIES.

Within 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall modify the rules for determining whether a participant has had a hardship for purposes of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant's spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Sec-

retary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code.

TITLE XI—ADMINISTRATIVE PROVISIONS

SEC. 1101. EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

(a) IN GENERAL.—The Secretary of the Treasury shall have full authority to establish and implement the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

(b) IMPROVEMENTS.—The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program), giving special attention to—

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 1102. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Section 417(a)(6)(A) of the Internal Revenue Code of 1986 is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 by substituting ''180 days'' for ''90 days'' each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—

(A) IN GENERAL.—Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking ''90-day'' and inserting ''180-day''.

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 relating to sections 203(e) and 205 of such Act by substituting ''180 days'' for ''90 days'' each place it appears.

(3) EFFECTIVE DATE.—The amendments and modifications made or required by this subsection shall apply to years beginning after December 31, 2005.

(b) NOTIFICATION OF RIGHT TO DEFER.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2005.

(B) REASONABLE NOTICE.—A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code or section 205 of such Act with respect to any description of consequences described in paragraph (1) made within 90 days after the Secretary of the Treasury issues the modifications required by paragraph (1) if the plan administrator makes a reasonable attempt to comply with such requirements.

SEC. 1103. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ''one-participant retirement plan'' means a retirement plan with respect to which the following requirements are met:

(A) on the first day of the plan year—

(i) the plan covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

(ii) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

(B) the plan meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) the plan does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses);

(D) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) the plan does not cover a business that uses the services of leased employees (within the meaning of section 414(n) of such Code).

For purposes of this paragraph, the term ''partner'' includes a 2-percent shareholder (as defined in section 1372(b) of such Code) of an S corporation.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2006.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the case of plan years beginning after December 31, 2006, the Secretary of the Treasury and the Secretary of Labor shall

provide for the filing of a simplified annual return for any retirement plan which covers less than 25 participants on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

SEC. 1104. VOLUNTARY EARLY RETIREMENT INCENTIVE AND EMPLOYMENT RETENTION PLANS MAINTAINED BY LOCAL EDUCATIONAL AGENCIES AND OTHER ENTITIES.

(a) VOLUNTARY EARLY RETIREMENT INCENTIVE PLANS.—

(1) TREATMENT AS PLAN PROVIDING SEVERANCE PAY.—Section 457(e)(11) of the Internal Revenue Code of 1986 (relating to certain plans excluded) is amended by adding at the end the following new subparagraph:

"(D) CERTAIN VOLUNTARY EARLY RETIREMENT INCENTIVE PLANS.—

"(i) IN GENERAL.—If an applicable voluntary early retirement incentive plan—

"(I) makes payments or supplements as an early retirement benefit, a retirement-type subsidy, or a benefit described in the last sentence of section 411(a)(9), and

"(II) such payments or supplements are made in coordination with a defined benefit plan which is described in section 401(a) and includes a trust exempt from tax under section 501(a) and which is maintained by an eligible employer described in paragraph (1)(A) or by an education association described in clause (ii)(II),

such applicable plan shall be treated for purposes of subparagraph (A)(i) as a bona fide severance pay plan with respect to such payments or supplements to the extent such payments or supplements could otherwise have been provided under such defined benefit plan (determined as if section 411 applied to such defined benefit plan).

"(ii) APPLICABLE VOLUNTARY EARLY RETIREMENT INCENTIVE PLAN.—For purposes of this subparagraph, the term 'applicable voluntary early retirement incentive plan' means a voluntary early retirement incentive plan maintained by—

"(I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)), or

"(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c) (5) or (6) and exempt from tax under section 501(a)."

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4(l)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(l)(1)) is amended—

(A) by inserting "(A)" after "(1)",

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by redesignating clauses (i) and (ii) of subparagraph (B) (as in effect before the amendments made by subparagraph (B)) as subclauses (I) and (II), respectively, and

(D) by adding at the end the following:

"(B) A voluntary early retirement incentive plan that—

"(i) is maintained by—

"(I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), or

"(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code, and

"(ii) makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of such Code or by an education association described in clause (i)(II),

shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of section 4(l)(2) of the Age

Discrimination in Employment Act (29 U.S.C. 623(l)(2)).''.

(b) EMPLOYMENT RETENTION PLANS.—

(1) IN GENERAL.—Section 457(f)(2) of the Internal Revenue Code of 1986 (relating to exceptions) is amended by striking ''and'' at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting '', and'', and by adding at the end the following:

''(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.''

(2) DEFINITIONS AND RULES RELATING TO EMPLOYMENT RETENTION PLANS.—Section 457(f) of such Code is amended by adding at the end the following new paragraph:

''(4) EMPLOYMENT RETENTION PLANS.—For purposes of paragraph (2)(F)—

''(A) IN GENERAL.—The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

"(B) OTHER RULES.—

"(i) LIMITATION.—Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in which such portion is paid or otherwise made available to the participant.

"(ii) TREATMENT.—A plan shall not be treated for purposes of this title as providing for the deferral of compensation for any year with respect to the portion of the plan described in subparagraph (A).

"(C) APPLICABLE EMPLOYMENT RETENTION PLAN.—The term 'applicable employment retention plan' means an employment retention plan maintained by—

"(i) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), or

"(ii) an education association which principally represents employees of 1 or more agencies described in clause (i) and which is described in section 501(c) (5) or

(6) and exempt from taxation under section 501(a).

"(D) EMPLOYMENT RETENTION PLAN.—The term 'employment retention plan' means a plan to pay, upon termination of employment, compensation to an employee of a local educational agency or education association described in subparagraph (C) for purposes of—

"(i) retaining the services of the employee, or

"(ii) rewarding such employee for the employee's service with 1 or more such agencies or associations.".

(c) COORDINATION WITH ERISA.—Section 3(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)(B)) is amended by adding at the end the following: "An applicable voluntary early retirement incentive plan (as defined in section 457(e)(11)(D)(ii) of the Internal Revenue Code of 1986) making payments or supplements described in section 457(e)(11)(D)(i) of such Code, and an applicable employment retention plan (as defined in section 457(f)(4)(C) of such Code) making payments of benefits described in section 457(f)(4)(A) of such Code, shall, for purposes of this title, be treated as a wel-

fare plan (and not a pension plan) with respect to such payments and supplements.''

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

(2) TAX AMENDMENTS.—The amendments made by subsections (a)(1) and (b) shall apply to taxable years ending after the date of the enactment of this Act.

(3) ERISA AMENDMENTS.—The amendment made by subsection (c) shall apply to plan years ending after the date of the enactment of this Act.

(4) CONSTRUCTION.—Nothing in the amendments made by this section shall alter or affect the construction of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, or the Age Discrimination in Employment Act of 1967 as applied to any plan, arrangement, or conduct to which such amendments do not apply.

SEC. 1105. NO REDUCTION IN UNEMPLOYMENT COMPENSATION AS A RESULT OF PENSION ROLLOVERS.

(a) IN GENERAL.—Section 3304(a) of the Internal Revenue Code of 1986 (relating to requirements for State

unemployment laws) is amended by adding at the end the following new flush sentence:

''Compensation shall not be reduced under paragraph (15) for any pension, retirement or retired pay, annuity, or similar payment which is not includible in gross income of the individual for the taxable year in which paid because it was part of a rollover distribution.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to weeks beginning on or after the date of the enactment of this Act.

SEC. 1106. WITHHOLDING ON DISTRIBUTIONS FROM GOVERNMENTAL SECTION 457 PLANS.

(a) IN GENERAL.—Section 641(f) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by adding at the end the following new paragraph:

''(4) TRANSITION RULE FOR CERTAIN GOVERNMENTAL PLANS.—In the case of distributions from an eligible deferred compensation plan of an employer described in section 457(e)(1)(A) of the Internal Revenue Code of 1986 which are made after December 31, 2001, and which are part of a series of distributions which—

''(A) began before January 1, 2002, and

"(B) are payable for 10 years or less, the Internal Revenue Code of 1986 may be applied to such distributions without regard to the amendments made by subsection (a)(1)(D).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the provisions of section 641 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 1107. TREATMENT OF DEFINED BENEFIT PLAN AS GOVERNMENTAL PLAN.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974, an eligible defined benefit plan shall be treated as a governmental plan (within the meaning of section 414(d) of such Code and section 3(32) of such Act).

(b) ELIGIBLE DEFINED BENEFIT PLAN.—For purposes of this section, an eligible defined benefit plan is a defined benefit plan maintained by a nonprofit corporation which was—

(1) incorporated on September 16, 1998, under a State nonprofit corporation statute; and

(2) organized for the express purpose of supporting the missions and goals of a public corporation which—

(A) was created by a State statute effective on July 1, 1995;

(B) is a governmental entity under State law; and

(C) is a member of the nonprofit corporation.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any year beginning before, on, or after the date of the enactment of this Act.

SEC. 1108. INCREASING PARTICIPATION IN CASH OR DEFERRED PLANS THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

"(13) NONDISCRIMINATION REQUIREMENTS FOR AUTOMATIC CONTRIBUTION TRUSTS.—

"(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement constitutes an automatic contribution trust.

"(B) AUTOMATIC CONTRIBUTION TRUST.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'automatic contribution trust' means an arrangement—

"(I) except as provided in clauses (ii) and (iii), under which each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to the applicable percentage of the employee's compensation, and

"(II) which meets the requirements of subparagraphs (C), (D), (E), and (F).

"(ii) EXCEPTION FOR EXISTING EMPLOYEES.—In the case of any employee—

"(I) who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic contribution trust, and

"(II) whose rate of contribution immediately before such first date was

less than the applicable percentage for the employee,

clause (i)(I) shall not apply to such employee until the date which is 1 year after such first date (or such earlier date as the employee may elect).

"(iii) ELECTION OUT.—Each employee eligible to participate in the arrangement may specifically elect not to have contributions made under clause (i), and such clause shall cease to apply to compensation paid on or after the effective date of the election.

"(iv) APPLICABLE PERCENTAGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—The term 'applicable percentage' means, with respect to any employee, the uniform percentage (not less than 3 percent) determined under the arrangement. In the case of an employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic con-

tribution trust, the initial applicable percentage shall in no event be less than the percentage in effect with respect to the employee under the arrangement immediately before the employee first begins participation in the automatic contribution trust.

"(II) INCREASE IN PERCENTAGE.—In the case of the second plan year beginning after the first date on which the election under clause (i)(I) is in effect with respect to the employee and any succeeding plan year, the applicable percentage shall be a percentage (not greater than 10 percent or such higher uniform percentage determined under the arrangement) equal to the sum of the applicable percentage for the employee as of the close of the preceding plan year plus 1 percentage point (or such higher percentage specified by the plan). A plan may elect to provide that, in lieu of any increase under the preceding sentence, the increase in the applica-

ble percentage required under this subclause shall occur after each increase in compensation an employee receives on or after the first day of such second plan year and that the applicable percentage after each such increase in compensation shall be equal to the applicable percentage for the employee immediately before such increase in compensation plus 1 percentage point (or such higher percentage specified by the plan).

"(C) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

"(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 7 percent of compensation; or

"(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation,

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of subclause (I). The rules of paragraph (12)(E)(ii) shall apply for purposes of subclauses (I) and (II).

"(ii) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under clause (i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

"(D) NOTICE REQUIREMENTS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

"(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (B)(i) applies—

"(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf, and how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

"(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

"(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year (or if the plan elects to change the applica-

ble percentage after any increase in compensation, before the increase), given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of paragraph (12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

"(E) PARTICIPATION, WITHDRAWAL, AND VESTING REQUIREMENTS.—The requirements of this subparagraph are met if—

"(i) the arrangement requires that each employee eligible to participate in the arrangement (determined without regard to any minimum service requirement otherwise applicable under section 410(a) or the plan) commences participation in the arrangement no later than the 1st day of the 1st calendar quarter beginning after the date on which employee first becomes so eligible,

"(ii) the withdrawal requirements of paragraph (2)(B) are met with respect to all employer contributions (including matching and elective contributions) taken

into account in determining whether the arrangement meets the requirements of subparagraph (C), and

"(iii) the arrangement requires that an employee's right to the accrued benefit derived from employer contributions described in clause (ii) (other than elective contributions) is nonforfeitable after the employee has completed at least 2 years of service.

"(F) CERTAIN WITHDRAWALS MUST BE ALLOWED.—Notwithstanding any other provision of this subsection, the requirements of this subparagraph are met if the arrangement allows employees to elect to make permissible withdrawals in accordance with section 414(w)."

(b) MATCHING CONTRIBUTIONS.—Section 401(m) of the Internal Revenue Code of 1986 (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

"(12) ALTERNATE METHOD FOR AUTOMATIC CONTRIBUTION TRUSTS.—A defined contribution

plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(A) meets the contribution requirements of subparagraphs (B)(i) and (C) of subsection (k)(13);

"(B) meets the notice requirements of subparagraph (D) of subsection (k)(13); and

"(C) meets the requirements of paragraph (11)(B) (ii) and (iii).".

(c) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(1) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of the Internal Revenue Code of 1986 is amended by inserting "or 401(k)(13)" after "section 401(k)(12)".

(2) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting "or 401(m)(12)" after "section 401(m)(11)".

(d) SECTION 403(b) CONTRACTS.—Paragraph (11) of section 401(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"(C) SECTION 403(b) CONTRACTS.—An annuity contract under section 403(b) shall be

1 treated as meeting the requirements of para-
2 graph (2) with respect to matching contribu-
3 tions if such contract meets requirements simi-
4 lar to the requirements under subparagraph
5 (A).''.

6 (e) PREEMPTION OF CONFLICTING STATE REGULA-
7 TION.—Section 514 of the Employee Retirement Income
8 Security of 1974 (29 U.S.C. 1144) is amended by insert-
9 ing at the end the following new subsection:

10 ''(e) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

11 ''(1) IN GENERAL.—Notwithstanding any other
12 provision of this section, any law of a State shall be
13 superseded if it would directly or indirectly prohibit
14 or restrict the inclusion in any plan of an eligible
15 automatic contribution arrangement.

16 ''(2) ELIGIBLE AUTOMATIC CONTRIBUTION AR-
17 RANGEMENT.—For purposes of this subsection, the
18 term 'eligible automatic contribution arrangement'
19 means an arrangement—

20 ''(A) under which a participant may elect
21 to have the employer make payments as con-
22 tributions under the plan on behalf of the par-
23 ticipant, or to the participant directly in cash,

24 ''(B) under which the participant is treated
25 as having elected to have the employer make

1 such contributions in an amount equal to a uni-
2 form percentage of compensation provided
3 under the plan until the participant specifically
4 elects not to have such contributions made (or
5 specifically elects to have such contributions
6 made at a different percentage),
7 ''(C) under which contributions described
8 in subparagraph (B) are invested in accordance
9 with regulations prescribed by the Secretary
10 under section 404(c)(4), and
11 ''(D) which meets the requirements of
12 paragraph (3).
13 ''(3) NOTICE REQUIREMENTS.—
14 ''(A) IN GENERAL.—The administrator of
15 an individual account plan shall, within a rea-
16 sonable period before each plan year, give to
17 each employee to whom an arrangement de-
18 scribed in paragraph (2) applies for such plan
19 year notice of the employee's rights and obliga-
20 tions under the arrangement which—
21 ''(i) is sufficiently accurate and com-
22 prehensive to apprise the employee of such
23 rights and obligations, and

"(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

"(B) TIME AND FORM OF NOTICE.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

"(i) the notice includes a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

"(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

"(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.".

(f) TREATMENT OF WITHDRAWALS OF CONTRIBUTIONS DURING FIRST 60 DAYS.—Section 414 of the In-

1 ternal Revenue Code of 1986 is amended by adding at the
2 end the following new subsection:
3 "(w) SPECIAL RULES FOR CERTAIN WITHDRAWALS
4 FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGE-
5 MENTS.—
6 "(1) IN GENERAL.—If an eligible automatic
7 contribution arrangement allows an employee to
8 elect to make permissible withdrawals—
9 "(A) the amount of any such withdrawal
10 shall be includible in the gross income of the
11 employee for the taxable year of the employee
12 in which the distribution is made,
13 "(B) no tax shall be imposed under section
14 72(t) with respect to the distribution, and
15 "(C) the arrangement shall not be treated
16 as violating any restriction on distributions
17 under this title solely by reason of allowing the
18 withdrawal.
19 In the case of any distribution to an employee by
20 reason of an election under this paragraph, employer
21 matching contributions shall be forfeited or subject
22 to such other treatment as the Secretary may pre-
23 scribe.
24 "(2) PERMISSIBLE WITHDRAWAL.—For pur-
25 poses of this subsection—

"(A) IN GENERAL.—The term 'permissible withdrawal' means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

"(i) is made pursuant to an election by an employee, and

"(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

"(B) TIME FOR MAKING ELECTION.—Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 60 days after the date of the first elective contribution with respect to the employee under the arrangement.

"(C) AMOUNT OF DISTRIBUTION.—Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

"(3) ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection, the term 'eligible automatic contribution arrangement' means an arrangement—

"(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

"(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage),

"(C) under which contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(4) of the Employee Retirement Income Security Act of 1974, and

"(D) which meets the requirements of paragraph (4).

"(4) NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

"(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

"(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

"(B) TIME AND FORM OF NOTICE.—A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

"(i) the notice includes a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

"(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

"(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SECTION 403(b) CONTRACTS.—The amendments made by subsection (d) shall apply to years ending after the date of the enactment of this Act.

SEC. 1109. TREATMENT OF INVESTMENT OF ASSETS BY PLAN WHERE PARTICIPANT FAILS TO EXERCISE INVESTMENT ELECTION.

(a) IN GENERAL.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

1 "(4) DEFAULT INVESTMENT ARRANGE-
2 MENTS.—
3 "(A) IN GENERAL.—For purposes of para-
4 graph (1), a participant in an individual ac-
5 count plan meeting the notice requirements of
6 subparagraph (B) shall be treated as exercising
7 control over the assets in the account with re-
8 spect to the amount of contributions and earn-
9 ings which, in the absence of an investment
10 election by the participant, are invested by the
11 plan in accordance with regulations prescribed
12 by the Secretary. The regulations under this
13 subparagraph shall provide guidance on the ap-
14 propriateness of designating default investments
15 that include a mix of asset classes consistent
16 with capital preservation, long-term capital ap-
17 preciation, or a blend of both.
18 "(B) NOTICE REQUIREMENTS.—
19 "(i) IN GENERAL.—The requirements
20 of this subparagraph are met if each
21 participant—
22 "(I) receives, within a reasonable
23 period of time before each plan year,
24 a notice explaining the employee's
25 right under the plan to designate how

contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant, such contributions and earnings will be invested, and

"(II) has a reasonable period of time after receipt of such notice and before the beginning of the plan year to make such designation.

"(ii) FORM OF NOTICE.—The requirements of clauses (i) and (ii) of section 401(k)(12)(D) of the Internal Revenue Code of 1986 shall be met with respect to the notices described in this subparagraph.".

(b) EFFECTIVE DATE.—

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

(2) REGULATIONS.—Final regulations under section 404(c)(4)(A) of the Employee Retirement Income Security Act of 1974 (as added by this section) shall be issued no later than 6 months after the date of the enactment of this Act.

SEC. 1110. CLARIFICATION OF FIDUCIARY RULES.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall issue final regulations clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan to a participant or beneficiary—

(1) is not subject to the safest available annuity standard under Interpretive Bulletin 95–1 (29 C.F.R. 2509.95–1), and

(2) is subject to all otherwise applicable fiduciary standards.

(b) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

TITLE XII—UNITED STATES TAX COURT MODERNIZATION

SEC. 1200. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 1201. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

"(h) ENTITLEMENT TO ANNUITY.—

"(1) IN GENERAL.—

"(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving spouse an annuity beginning with the day of the death of the judge or following the surviving spouse's attainment of the age of 50 years, whichever is the later, in an amount computed as provided in subsection (m).

"(B) ANNUITY TO CHILD.—If such a judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

"(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

"(ii) 20 percent of such average annual salary, divided by the number of such children.

"(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

"(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

"(ii) 40 percent of such average annual salary, divided by the number of such children.

"(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

"(A) who dies while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c)(1) or the deposits

required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

"(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

"(3) TERMINATION OF ANNUITY.—

"(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or such surviving spouse's remarriage before attaining age 55.

"(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child's marriage, or (iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability

the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

"(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

"(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

"(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

"(A) the amount of salary deductions provided for by subsection (c)(1) that would have

been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge's death, reduced by

"(B) the amount of such salary deductions that were actually made before the date of the judge's death.'.'

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

"(8) The terms 'assassinated' and 'assassination' mean the killing of a judge that is motivated by the performance by that judge of his or her official duties.".

(c) DETERMINATION OF ASSASSINATION.—Subsection (i) of section 7448 is amended—

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

"(i) DETERMINATIONS BY CHIEF JUDGE.—

"(1) DEPENDENCY AND DISABILITY.—",

(2) by moving the text 2 ems to the right, and

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

"(2) ASSASSINATION.—The chief judge shall determine whether the killing of a judge was an as-

sassination, subject to review only by the Tax Court. The head of any Federal agency that investigates the killing of a judge shall provide information to the chief judge that would assist the chief judge in making such a determination.''.

(d) COMPUTATION OF ANNUITIES.—Subsection (m) of section 7448 is amended—

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

''(m) COMPUTATION OF ANNUITIES.—

''(1) IN GENERAL.—'',

(2) by moving the text 2 ems to the right, and

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

''(2) ASSASSINATED JUDGES.—In the case of a judge who is assassinated and who has served less than 3 years, the annuity of the surviving spouse of such judge shall be based upon the average annual salary received by such judge for judicial service.''.

(e) OTHER BENEFITS.—Section 7448 is amended by adding at the end the following:

''(u) OTHER BENEFITS.—In the case of a judge who is assassinated, an annuity shall be paid under this section notwithstanding a survivor's eligibility for or receipt of benefits under chapter 81 of title 5, United States Code,

except that the annuity for which a surviving spouse is eligible under this section shall be reduced to the extent that the total benefits paid under this section and chapter 81 of that title for any year would exceed the current salary for that year of the office of the judge.''.

SEC. 1202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT JUDICIAL SURVIVOR ANNUITIES.

(a) IN GENERAL.—Subsection (s) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

''(s) INCREASES IN SURVIVOR ANNUITIES.—Each time that an increase is made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, each annuity payable from the survivors annuity fund under this section shall be increased at the same time by the same percentage by which annuities are increased under such section 8340(b).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to increases made under section 8340(b) of title 5, United States Code, in annuities payable under subchapter III of chapter 83 of that title, taking effect after the date of the enactment of this Act.

SEC. 1203. LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges) is amended by adding at the end the following new subsection:

''(j) LIFE INSURANCE COVERAGE.—For purposes of chapter 87 of title 5, United States Code (relating to life insurance), any individual who is serving as a judge of the Tax Court or who is retired under this section is deemed to be an employee who is continuing in active employment.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a judge of the United States Tax Court or to any retired judge of the United States Tax Court on the date of the enactment of this Act.

SEC. 1204. COST OF LIFE INSURANCE COVERAGE FOR TAX COURT JUDGES AGE 65 OR OVER.

Section 7472 (relating to expenditures) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding any other provision of law, the Tax Court is authorized to pay on behalf of its judges, age 65 or over, any increase in the cost of Federal Employees' Group Life Insurance imposed after April 24, 1999, including any expenses generated by such payments, as authorized by the chief judge in a manner consistent

with such payments authorized by the Judicial Conference of the United States pursuant to section 604(a)(5) of title 28, United States Code.''

SEC. 1205. MODIFICATION OF TIMING OF LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.

(a) IN GENERAL.—Section 7443 (relating to membership of the Tax Court) is amended by adding at the end the following new subsection:

''(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED ANNUAL LEAVE.—Notwithstanding the provisions of sections 5551 and 6301 of title 5, United States Code, when an individual subject to the leave system provided in chapter 63 of that title is appointed by the President to be a judge of the Tax Court, the individual shall be entitled to receive, upon appointment to the Tax Court, a lump-sum payment from the Tax Court of the accumulated and accrued current annual leave standing to the individual's credit as certified by the agency from which the individual resigned.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any judge of the United States Tax Court who has an outstanding leave balance on the date of the enactment of this Act and to any individual appointed by the President to serve as a judge of the United States Tax Court after such date.

SEC. 1206. PARTICIPATION OF TAX COURT JUDGES IN THE THRIFT SAVINGS PLAN.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

"(k) THRIFT SAVINGS PLAN.—

"(1) ELECTION TO CONTRIBUTE.—

"(A) IN GENERAL.—A judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

"(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

"(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

"(3) SPECIAL RULES.—

"(A) AMOUNT CONTRIBUTED.—The amount contributed by a judge to the Thrift Savings Fund in any pay period shall not ex-

ceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

"(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

"(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

"(i) retires under subsection (b), or

"(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

"(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code,

shall apply with respect to a judge who makes an election under paragraph (1).

"(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, except that United States Tax Court judges may only begin to participate in the Thrift Savings Plan at the next open season beginning after such date.

SEC. 1207. EXEMPTION OF TEACHING COMPENSATION OF RETIRED JUDGES FROM LIMITATION ON OUTSIDE EARNED INCOME.

(a) IN GENERAL.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following new subsection:

"(l) TEACHING COMPENSATION OF RETIRED JUDGES.—For purposes of the limitation under section 501(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.), any compensation for teaching approved under section 502(a)(5) of such Act shall not be treated as outside earned income when received by a judge of the Tax Court who has retired under subsection (b) for teaching performed during any calendar year for which such a judge has met the requirements of subsection (c), as certified by the chief judge of the Tax Court.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any individual serving as a retired judge of the United States Tax Court on or after the date of the enactment of this Act.

SEC. 1208. GENERAL PROVISIONS RELATING TO MAGISTRATE JUDGES OF THE TAX COURT.

(a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO MAGISTRATE JUDGE OF THE TAX COURT.—The heading of section 7443A is amended to read as follows:

"SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT."

(b) APPOINTMENT, TENURE, AND REMOVAL.—Subsection (a) of section 7443A is amended to read as follows:

"(a) APPOINTMENT, TENURE, AND REMOVAL.—

"(1) APPOINTMENT.—The chief judge may, from time to time, appoint and reappoint magistrate

judges of the Tax Court for a term of 8 years. The magistrate judges of the Tax Court shall proceed under such rules as may be promulgated by the Tax Court.

"(2) REMOVAL.—Removal of a magistrate judge of the Tax Court during the term for which he or she is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability, but the office of a magistrate judge of the Tax Court shall be terminated if the judges of the Tax Court determine that the services performed by the magistrate judge of the Tax Court are no longer needed. Removal shall not occur unless a majority of all the judges of the Tax Court concur in the order of removal. Before any order of removal shall be entered, a full specification of the charges shall be furnished to the magistrate judge of the Tax Court, and he or she shall be accorded by the judges of the Tax Court an opportunity to be heard on the charges.".

(c) SALARY.—Section 7443A(d) (relating to salary) is amended by striking "90" and inserting "92".

(d) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—Section 7443A is amended by adding at the end the following new subsection:

"(f) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—

"(1) IN GENERAL.—A magistrate judge of the Tax Court appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code.

"(2) TREATMENT OF UNUSED LEAVE.—

"(A) AFTER SERVICE AS MAGISTRATE JUDGE.—If an individual who is exempted under paragraph (1) from the subchapter referred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

"(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity

includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

"(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.".

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking "SPECIAL TRIAL JUDGES" and inserting "Magistrate Judges of the Tax Court".

(2) Section 7443A(b) is amended by striking "special trial judges of the court" and inserting "magistrate judges of the Tax Court".

(3) Subsections (c) and (d) of section 7443A are amended by striking ''special trial judge'' and inserting ''magistrate judge of the Tax Court'' each place it appears.

(4) Section 7443A(e) is amended by striking ''special trial judges'' and inserting ''magistrate judges of the Tax Court''.

(5) Section 7456(a) is amended by striking ''special trial judge'' each place it appears and inserting ''magistrate judge''.

(6) Subsection (c) of section 7471 is amended—

(A) by striking the subsection heading and inserting ''MAGISTRATE JUDGES OF THE TAX COURT.—'', and

(B) by striking ''special trial judges'' and inserting ''magistrate judges''.

SEC. 1209. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended by redesignating paragraphs (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10), respectively, and by inserting after paragraph (4) the following new paragraphs:

"(5) The term 'magistrate judge' means a judicial officer appointed pursuant to section 7443A, including any individual receiving an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, whether or not performing judicial duties under section 7443C.

"(6) The term 'magistrate judge's salary' means the salary of a magistrate judge received under section 7443A(d), any amount received as an annuity under section 7443B, or chapters 83 or 84, as the case may be, of title 5, United States Code, and compensation received under section 7443C.".

(b) ELECTION.—Subsection (b) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended—

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

"(b) ELECTION.—

"(1) JUDGES.—",

(2) by moving the text 2 ems to the right, and

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

"(2) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of

this section. Such election shall be filed not later than the later of 6 months after—

"(A) 6 months after the date of the enactment of this paragraph,

"(B) the date the judge takes office, or

"(C) the date the judge marries.".

(c) CONFORMING AMENDMENTS.—

(1) The heading of section 7448 is amended by inserting "**AND MAGISTRATE JUDGES**" after "**JUDGES**".

(2) The item relating to section 7448 in the table of sections for part I of subchapter C of chapter 76 is amended by inserting "and magistrate judges" after "judges".

(3) Subsections (c)(1), (d), (f), (g), (h), (j), (m), (n), and (u) of section 7448, as amended by this Act, are each amended—

(A) by inserting "or magistrate judge" after "judge" each place it appears other than in the phrase "chief judge", and

(B) by inserting "or magistrate judge's" after "judge's" each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking ''Tax Court judges'' and inserting ''Tax Court judicial officers'',

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting ''and section 7443A(d)'' after ''(a)(4)'', and

(ii) in subparagraph (B), by striking ''subsection (a)(4)'' and inserting ''subsections (a)(4) and (a)(6)''.

(5) Section 7448(g) is amended by inserting ''or section 7443B'' after ''section 7447'' each place it appears, and by inserting ''or an annuity'' after ''retired pay''.

(6) Section 7448(j)(1) is amended—

(A) in subparagraph (A), by striking ''service or retired'' and inserting ''service, retired'', and by inserting '', or receiving any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code,'' after ''section 7447'', and

(B) in the last sentence, by striking ''subsections (a) (6) and (7)'' and inserting ''paragraphs (8) and (9) of subsection (a)''.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting ''or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code'' after ''7447(d)'', and

(B) by inserting ''or 7443B(m)(1)(B) after ''7447(f)(4)''.

(8) Section 7448(n) is amended by inserting ''his years of service pursuant to any appointment under section 7443A,'' after ''of the Tax Court,''.

(9) Section 3121(b)(5)(E) is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

(10) Section 210(a)(5)(E) of the Social Security Act is amended by inserting ''or magistrate judge'' before ''of the United States Tax Court''.

SEC. 1210. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by inserting after section 7443A the following new section:

''SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

''(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires from office after attaining the age

of 65 years and serving at least 14 years, whether continuously or otherwise, as such magistrate judge shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to the salary being received at the time the magistrate judge leaves office.

"(b) RETIREMENT UPON FAILURE OF REAPPOINTMENT.—A magistrate judge of the Tax Court to whom this section applies who is not reappointed following the expiration of the term of office of such magistrate judge and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

"(1) such magistrate judge has served at least 1 full term as a magistrate judge, and

"(2) not earlier than 9 months before the date on which the term of office of such magistrate judge expires, and not later than 6 months before such date, such magistrate judge notified the chief judge of the Tax Court in writing that such magistrate

judge was willing to accept reappointment to the position in which such magistrate judge was serving.

"(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate judge of the Tax Court to whom this section applies and who retires after serving at least 8 years, whether continuously or otherwise, as such a magistrate judge shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the magistrate judge's lifetime, an annuity equal to that portion of the salary being received at the time the magistrate judge leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by ⅙ of 1 percent for each full month such magistrate judge was under the age of 65 at the time the magistrate judge left office, except that such reduction shall not exceed 20 percent.

"(d) RETIREMENT FOR DISABILITY.—A magistrate judge of the Tax Court to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a magistrate judge and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the magistrate judge's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the

case of a magistrate judge who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

"(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

"(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—

"(1) IN GENERAL.—A magistrate judge of the Tax Court shall be entitled to an annuity under this section if the magistrate judge elects an annuity under this section by notifying the chief judge of the Tax Court not later than the later of—

"(A) 5 years after the magistrate judge of the Tax Court begins judicial service, or

"(B) 5 years after the date of the enactment of this subsection.

Such notice shall be given in accordance with procedures prescribed by the Tax Court.

"(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

"(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, for service performed as a magistrate or otherwise,

"(B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code,

"(C) retired pay under section 7447, or

"(D) retired pay under section 7296 of title 38, United States Code.

"(3) COORDINATION WITH TITLE 5.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

"(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code,

"(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5, and

"(C) is entitled to a lump-sum credit under section 8342(a) or 8424 of such title 5, as the case may be.

"(g) CALCULATION OF SERVICE.—For purposes of calculating an annuity under this section—

"(1) service as a magistrate judge of the Tax Court to whom this section applies may be credited, and

"(2) each month of service shall be credited as 1/12 of a year, and the fractional part of any month shall not be credited.

"(h) COVERED POSITIONS AND SERVICE.—This section applies to any magistrate judge of the Tax Court or special trial judge of the Tax Court appointed under this subchapter, but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years before the date of the enactment of this subsection.

"(i) PAYMENTS PURSUANT TO COURT ORDER.—

"(1) IN GENERAL.—Payments under this section which would otherwise be made to a magistrate judge of the Tax Court based upon his or her service

shall be paid (in whole or in part) by the chief judge of the Tax Court to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

"(2) REQUIREMENTS FOR PAYMENT.—Paragraph (1) shall apply only to payments made by the chief judge of the Tax Court after the date of receipt by the chief judge of written notice of such decree, order, or agreement, and such additional information as the chief judge may prescribe.

"(3) COURT DEFINED.—For purposes of this subsection, the term 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

"(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

"(1) DEDUCTIONS.—Beginning with the next pay period after the chief judge of the Tax Court re-

ceives a notice under subsection (f) that a magistrate judge of the Tax Court has elected an annuity under this section, the chief judge shall deduct and withhold 1 percent of the salary of such magistrate judge. Amounts shall be so deducted and withheld in a manner determined by the chief judge. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Tax Court Judicial Officers' Retirement Fund. Deductions under this subsection from the salary of a magistrate judge shall terminate upon the retirement of the magistrate judge or upon completion of 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

"(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each magistrate judge of the Tax Court who makes an election under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 7448) is a full and complete discharge and acquittance of all claims and

demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

"(k) DEPOSITS FOR PRIOR SERVICE.—Each magistrate judge of the Tax Court who makes an election under subsection (f) may deposit, for service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

"(l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge of the Tax Court from whom such amounts are received, for credit to the Tax Court Judicial Officers' Retirement Fund.

"(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

"(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—Subject to paragraph (3), any magistrate judge of the Tax Court who re-

tires under this section and who fails to perform judicial duties required of such individual by section 7443C shall forfeit all rights to an annuity under this section for a 1-year period which begins on the 1st day on which such individual fails to perform such duties.

"(2) PERMANENT FORFEITURE OF RETIRED PAY WHERE CERTAIN NON-GOVERNMENT SERVICES PERFORMED.—Subject to paragraph (3), any magistrate judge of the Tax Court who retires under this section and who thereafter performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation for the individual's client, the individual's employer, or any of such employer's clients, shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which the individual performs (or supervises or directs the performance of) such services. The preceding sentence shall not apply to any civil office or employment under the Government of the United States.

"(3) FORFEITURES NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—

"(A) IN GENERAL.—If a magistrate judge of the Tax Court makes an election under this paragraph—

"(i) paragraphs (1) and (2) (and section 7443C) shall not apply to such magistrate judge beginning on the date such election takes effect, and

"(ii) the annuity payable under this section to such magistrate judge, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such magistrate judge is entitled on the day before such effective date.

"(B) ELECTION REQUIREMENTS.—An election under subparagraph (A)—

"(i) may be made by a magistrate judge of the Tax Court eligible for retirement under this section, and

"(ii) shall be filed with the chief judge of the Tax Court.

Such an election, once it takes effect, shall be irrevocable.

"(C) EFFECTIVE DATE OF ELECTION.—Any election under subparagraph (A) shall take

effect on the first day of the first month following the month in which the election is made.

"(4) ACCEPTING OTHER EMPLOYMENT.—Any magistrate judge of the Tax Court who retires under this section and thereafter accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a magistrate judge of the Tax Court under section 7443C) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

"(n) LUMP-SUM PAYMENTS.—

"(1) ELIGIBILITY.—

"(A) IN GENERAL.—Subject to paragraph (2), an individual who serves as a magistrate judge of the Tax Court and—

"(i) who leaves office and is not reappointed as a magistrate judge of the Tax Court for at least 31 consecutive days,

"(ii) who files an application with the chief judge of the Tax Court for payment of a lump-sum credit,

"(iii) is not serving as a magistrate judge of the Tax Court at the time of filing of the application, and

"(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application,

is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a magistrate judge of the Tax Court.

"(B) PAYMENT TO SURVIVORS.—Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the magistrate judge of the Tax Court and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of title 28, United States Code, and in accordance with the last 2 sentences of paragraph (1) of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of such section 376 shall be deemed to mean 'magistrate judge of the

Tax Court' and the terms 'Administrative Office of the United States Courts' and 'Director of the Administrative Office of the United States Courts' shall be deemed to mean 'chief judge of the Tax Court'.

"(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

"(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

"(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

"(F) PAYMENT UPON TERMINATION.—Any accrued annuity benefits remaining unpaid on the termination, except by death, of the annuity

of a magistrate judge of the Tax Court shall be paid to that individual.

"(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

"(2) SPOUSES AND FORMER SPOUSES.—

"(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

"(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge's application, and

"(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court ap-

proved property settlement agreement incident to such decree, if—

"(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

"(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge's spouse or former spouse to any portion of an annuity under subsection (i).

"(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

"(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe proce-

dures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

"(3) DEFINITION.—For purposes of this subsection, the term 'lump-sum credit' means the unrefunded amount consisting of—

"(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

"(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

"(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers' Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

"(i) if the service covered thereby aggregates 1 year or less, or

"(ii) for the fractional part of a month in the total service.

"(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT FUND.—

"(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the 'Tax Court Judicial Officers' Retirement Fund'. Amounts in the Fund are authorized to be appropriated for the payment of annuities, refunds, and other payments under this section.

"(2) INVESTMENT OF FUND.—The Secretary shall invest, in interest bearing securities of the United States, such currently available portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

"(3) UNFUNDED LIABILITY.—

"(A) IN GENERAL.—There are authorized to be appropriated to the Tax Court Judicial Officers' Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

"(B) UNFUNDED LIABILITY.—For purposes of subparagraph (A), the term 'unfunded liability' means the estimated excess, determined on an annual basis in accordance with

the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

"(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

"(ii) the balance in the Fund as of the date the unfunded liability is determined.

"(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

"(1) ELECTION TO CONTRIBUTE.—

"(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 611 of the Pension Security and Transparency Act of 2005 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

"(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.

"(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to a magistrate judge who makes an election under paragraph (1).

"(3) SPECIAL RULES.—

"(A) AMOUNT CONTRIBUTED.—The amount contributed by a magistrate judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such judge's basic pay for such pay period as allowable under section 8440f of title 5, United States Code.

"(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a magistrate judge under section 8432(c) of title 5, United States Code.

"(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5.—Section 8433(b) of title 5, United States Code, applies with respect to a magistrate judge who makes an election under paragraph (1) and—

"(i) who retires entitled to an immediate annuity under this section (including

a disability annuity under subsection (d) of this section) or section 611 of the Pension Security and Transparency Act of 2005,

"(ii) who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under this section or section 611 of the Pension Security and Transparency Act of 2005, or

"(iii) who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under this section or section 611 of the Pension Security and Transparency Act of 2005.

"(D) SEPARATION FROM SERVICE.—With respect to a magistrate judge to whom this subsection applies, retirement under this section or section 611 of the Pension Security and Transparency Act of 2005 is a separation from service for purposes of subchapters III and VII of chapter 84 of title 5, United States Code.

"(4) DEFINITIONS.—For purposes of this subsection, the terms 'retirement' and 'retire' include removal from office under section 7443A(a)(2) on the sole ground of mental or physical disability.

"(5) OFFSET.—In the case of a magistrate judge who receives a distribution from the Thrift Savings Fund and who later receives an annuity under this section, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

"(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any magistrate judge retires under circumstances making such magistrate judge eligible to make an election under subsection (b) of section 8433 of title 5, United States Code, and such magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel Management prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.".

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76 is amended

by inserting after the item relating to section 7443A the following new item:

"Sec. 7443B. Retirement for magistrate judges of the Tax Court.".

SEC. 1211. INCUMBENT MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—A magistrate judge of the United States Tax Court in active service on the date of the enactment of this Act shall, subject to subsection (b), be entitled, in lieu of the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of paragraph (2), and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as added by this Act, for any service as a magistrate judge of the United States Tax Court or special trial judge of the United States Tax Court but only with respect to service as such a magistrate judge or special trial judge after a date not earlier than 9½ years prior to the date

of the enactment of this Act (as specified in the election pursuant to subsection (b)) for which deductions and deposits are made under subsections (j) and (k) of such section 7443B, as applicable, without regard to the minimum number of years of service as such a magistrate judge of the United States Tax Court, except that—

(A) in the case of a magistrate judge who retired with less than 8 years of service, the annuity under subsection (c) of such section 7443B shall be equal to that proportion of the salary being received at the time the magistrate judge leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 7443B if the magistrate judge is under age 65 at the time he or she leaves office, and

(B) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) FILING OF NOTICE OF ELECTION.—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section only if the magistrate judge

1 files a notice of that election with the chief judge of the
2 United States Tax Court specifying the date on which
3 service would begin to be credited under section 7443B
4 of the Internal Revenue Code of 1986, as added by this
5 Act, in lieu of chapter 83 or chapter 84 of title 5, United
6 States Code. Such notice shall be filed in accordance with
7 such procedures as the chief judge of the United States
8 Tax Court shall prescribe.

9 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-
10 istrate judge of the United States Tax Court who makes
11 an election under subsection (b) shall be entitled to a
12 lump-sum credit under section 8342 or 8424 of title 5,
13 United States Code, as the case may be, for any service
14 which is covered under section 7443B of the Internal Rev-
15 enue Code of 1986, as added by this Act, pursuant to that
16 election, and with respect to which any contributions were
17 made by the magistrate judge under the applicable provi-
18 sions of title 5, United States Code.

19 (d) RECALL.—With respect to any magistrate judge
20 of the United States Tax Court receiving an annuity under
21 this section who is recalled to serve under section 7443C
22 of the Internal Revenue Code of 1986, as added by this
23 Act—

24 (1) the amount of compensation which such re-
25 called magistrate judge receives under such section

7443C shall be calculated on the basis of the annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a reemployed annuitant described in paragraph (2).

SEC. 1212. PROVISIONS FOR RECALL.

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

"SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

"(a) RECALLING OF RETIRED MAGISTRATE JUDGES.—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of such individual for any period or periods speci-

fied by the chief judge; except that in the case of any such individual—

"(1) the aggregate of such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

"(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

"(b) COMPENSATION.—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided under the provisions of section 7443B or under the applicable provisions of title 5, United States Code, an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service, who is not recalled in a subsequent year, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurred for the office from which such individual retired.

"(c) RULEMAKING AUTHORITY.—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court."

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after the item relating to section 7443B the following new item:

"Sec. 7443C. Recall of magistrate judges of the Tax Court.".

SEC. 1213. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

TITLE XIII—OTHER PROVISIONS

Subtitle A—Administrative Provision

SEC. 1301. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Em-

ployee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under such Acts, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as the Secretary of the Treasury may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), subparagraph (B) shall be applied by substituting the date which is 2 years after the date otherwise applied under subparagraph (B).

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

SEC. 1302. AUTHORITY TO THE SECRETARY OF LABOR, SECRETARY OF THE TREASURY, AND THE PENSION BENEFIT GUARANTY CORPORATION TO POSTPONE CERTAIN DEADLINES.

The Secretary of Labor, the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation shall exercise their authority under section 518 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1148) and section 7508A of the Internal Revenue Code of 1986 to postpone certain dead-

lines by reason of the Presidentially declared disaster areas in Louisiana, Mississippi, Alabama, Texas, Florida, or elsewhere, due to the effect of Hurricane Katrina, Rita, or Wilma. The Secretaries and the Executive Director of the Corporation shall issue guidance as soon as is practicable to plan sponsors and participants regarding extension of deadlines and rules applicable to these extraordinary circumstances. Nothing in this section shall be construed to relieve any plan sponsor from any requirement to pay benefits or make contributions under the plan of the sponsor.

Subtitle B—Governmental Pension Plan Equalization

SEC. 1311. DEFINITION OF GOVERNMENTAL PLAN.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 414(d) of the Internal Revenue Code of 1986 (definition of governmental plan) is amended by adding at the end the following: ''The term 'governmental plan' includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal,

State, or tribal law which is wholly owned or controlled by any of the foregoing.''.

(b) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32)) is amended by adding at the end the following: ''The term 'governmental plan' includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.''.

SEC. 1312. EXTENSION TO ALL GOVERNMENTAL PLANS OF CURRENT MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) and subparagraph (G) of section 401(a)(26) of the Internal Revenue Code of 1986 are each amended by striking ''section 414(d))'' and all that follows and inserting ''section 414(d)).''.

(2) Subparagraph (G) of section 401(k)(3) of such Code and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 (Public Law 105–34; 111 Stat. 1063) are each amended by striking ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)''.

(b) CONFORMING AMENDMENTS.—

(1) The heading of subparagraph (G) of section 401(a)(5) of the Internal Revenue Code of 1986 is amended by striking ''STATE AND LOCAL GOVERNMENTAL'' and inserting ''GOVERNMENTAL''.

(2) The heading of subparagraph (G) of section 401(a)(26) of such Code is amended by striking ''EXCEPTION FOR STATE AND LOCAL'' and inserting ''EXCEPTION FOR''.

(3) Section 401(k)(3)(G) of such Code is amended by inserting ''GOVERNMENTAL PLAN.—'' after ''(G)''.

SEC. 1313. CLARIFICATION THAT TRIBAL GOVERNMENTS ARE SUBJECT TO THE SAME DEFINED BENEFIT PLAN RULES AND REGULATIONS APPLIED TO STATE AND OTHER LOCAL GOVERNMENTS, THEIR POLICE AND FIREFIGHTERS.

(a) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) POLICE AND FIREFIGHTERS.—Subparagraph (H) section 415(b)(2) of the Internal Revenue Code of 1986 (defining participant) is amended—

(A) in clause (i), by striking ''State or political subdivision'' and inserting ''State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision''; and

(B) in clause (ii)(I), by striking ''State or political subdivision'' each place it appears and inserting ''State, Indian tribal government (as so defined), or any political subdivision''.

(2) STATE AND LOCAL GOVERNMENT PLANS.—

(A) IN GENERAL.—Subparagraph (A) of section 415(b)(10) of such Code (relating to limitation to equal accrued benefit) is amended—

(i) by inserting ", Indian tribal government (as defined in section 7701(a)(40))," after "State";

(ii) by inserting "any" before "political subdivision"; and

(iii) by inserting "any of" before "the foregoing".

(B) CONFORMING AMENDMENT.—The heading of paragraph (1) of section 415(b) of such Code is amended by striking "SPECIAL RULE FOR STATE AND" and inserting "SPECIAL RULE FOR STATE, INDIAN TRIBAL, AND".

(3) GOVERNMENT PICK UP CONTRIBUTIONS.—Paragraph (2) of section 414(h) of such Code (relating to designation by units of government) is amended by striking "State or political subdivision" and inserting "State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision".

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 4021(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321(b)) is amended—

(1) in paragraph (12), by striking "or" at the end;

(2) in paragraph (13), by striking ''plan.'' and inserting ''plan; or''; and

(3) by adding at the end the following:

''(14) established and maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.''.

SEC. 1314. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to any year beginning before, on, or after the date of the enactment of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1321. TRANSFER OF EXCESS FUNDS FROM BLACK LUNG DISABILITY TRUSTS TO UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND.

(a) IN GENERAL.—So much of section 501(c)(21)(C) of the Internal Revenue Code of 1986 (relating to black

lung disability trusts) as precedes the last sentence is amended to read as follows:

"(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the excess (if any), as of the close of the preceding taxable year, of—

"(i) the fair market value of the assets of the trust, over

"(ii) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person."

(b) TRANSFER.—Section 9705 of such Code (relating to transfer) is amended by adding at the end the following new subsection:

"(c) TRANSFER FROM BLACK LUNG DISABILITY TRUSTS.—

"(1) IN GENERAL.—The Secretary shall transfer each fiscal year to the Fund from the general fund of the Treasury an amount which the Secretary estimates to be the additional amounts received in the Treasury for that fiscal year by reason of the amendment made by section 1321(a) of the Pension Security and Transparency Act of 2005. The Sec-

retary shall adjust the amount transferred for any year to the extent necessary to correct errors in any estimate for any prior year.

"(2) USE OF FUNDS.—Any amount transferred to the Combined Fund under paragraph (1) shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for any plan year beginning after December 31, 2002.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 1322. TREATMENT OF DEATH BENEFITS FROM CORPORATE-OWNED LIFE INSURANCE.

(a) IN GENERAL.—Section 101 of the Internal Revenue Code of 1986 (relating to certain death benefits) is amended by adding at the end the following new subsection:

"(j) TREATMENT OF CERTAIN EMPLOYER-OWNED LIFE INSURANCE CONTRACTS.—

"(1) GENERAL RULE.—In the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder by reason of paragraph (1) of subsection (a) shall not exceed an amount equal to the sum of the

premiums and other amounts paid by the policyholder for the contract.

"(2) EXCEPTIONS.—In the case of an employer-owned life insurance contract with respect to which the notice and consent requirements of paragraph (4) are met, paragraph (1) shall not apply to any of the following:

"(A) EXCEPTIONS BASED ON INSURED'S STATUS.—Any amount received by reason of the death of an insured who, with respect to an applicable policyholder—

"(i) was an employee at any time during the 12-month period before the insured's death, or

"(ii) is, at the time the contract is issued—

"(I) a director,

"(II) a highly compensated employee within the meaning of section 414(q) (without regard to paragraph (1)(B)(ii) thereof), or

"(III) a highly compensated individual within the meaning of section 105(h)(5), except that '35 percent'

shall be substituted for '25 percent' in subparagraph (C) thereof.

"(B) EXCEPTION FOR AMOUNTS PAID TO INSURED'S HEIRS.—Any amount received by reason of the death of an insured to the extent—

"(i) the amount is paid to a member of the family (within the meaning of section 267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

"(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

"(3) EMPLOYER-OWNED LIFE INSURANCE CONTRACT.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'employer-owned life insurance contract' means a life insurance contract which—

"(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

"(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

"(B) APPLICABLE POLICYHOLDER.—For purposes of this subsection—

"(i) IN GENERAL.—The term 'applicable policyholder' means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

"(ii) RELATED PERSONS.—The term 'applicable policyholder' includes any person which—

"(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

"(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

"(4) NOTICE AND CONSENT REQUIREMENTS.—The notice and consent requirements of this paragraph are met if, before the issuance of the contract, the employee—

"(A) is notified in writing that the applicable policyholder intends to insure the employee's life and the maximum face amount for which the employee could be insured at the time the contract was issued,

"(B) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment, and

"(C) is informed in writing that an applicable policyholder will be a beneficiary of any

proceeds payable upon the death of the employee.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYEE.—The term 'employee' includes an officer, director, and highly compensated employee (within the meaning of section 414(q)).

"(B) INSURED.—The term 'insured' means, with respect to an employer-owned life insurance contract, an individual covered by the contract who is a United States citizen or resident. In the case of a contract covering the joint lives of 2 individuals, references to an insured include both of the individuals.".

(b) REPORTING REQUIREMENTS.—Subpart A of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6039H the following new section:

"SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO EMPLOYER-OWNED LIFE INSURANCE CONTRACTS.

"(a) IN GENERAL.—Every applicable policyholder owning 1 or more employer-owned life insurance contracts

issued after the date of the enactment of this section shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) showing for each year such contracts are owned—

"(1) the number of employees of the applicable policyholder at the end of the year,

"(2) the number of such employees insured under such contracts at the end of the year,

"(3) the total amount of insurance in force at the end of the year under such contracts,

"(4) the name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged, and

"(5) that the applicable policyholder has a valid consent for each insured employee (or, if all such consents are not obtained, the number of insured employees for whom such consent was not obtained).

"(b) RECORDKEEPING REQUIREMENT.—Each applicable policyholder owning 1 or more employer-owned life insurance contracts during any year shall keep such records as may be necessary for purposes of determining whether the requirements of this section and section 101(j) are met.

"(c) DEFINITIONS.—Any term used in this section which is used in section 101(j) shall have the same meaning given such term by section 101(j).".

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 101(a) of the Internal Revenue Code of 1986 is amended by striking "and subsection (f)" and inserting "subsection (f), and subsection (j)".

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6039H the following new item:

"Sec. 6039I. Returns and records with respect to employer-owned life insurance contracts.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to life insurance contracts issued after the date of the enactment of this Act, except for a contract issued after such date pursuant to an exchange described in section 1035 of the Internal Revenue Code of 1986 for a contract issued on or prior to that date. For purposes of the preceding sentence, any material increase in the death benefit or other material change shall cause the contract to be treated as a new contract except that, in the case of a master contract (within the meaning of section 264(f)(4)(E) of such Code), the addition of cov-

ered lives shall be treated as a new contract only with respect to such additional covered lives.

Subtitle D—Other Related Pension Provisions

PART I—HEALTH AND MEDICAL BENEFITS

SEC. 1331. USE OF EXCESS PENSION ASSETS FOR FUTURE RETIREE HEALTH BENEFITS.

(a) IN GENERAL.—Section 420 of the Internal Revenue Code of 1986 (relating to transfers of excess pension assets to retiree health accounts), as amended by this Act, is amended by adding at the end the following new subsection:

"(f) QUALIFIED TRANSFER TO COVER FUTURE RETIREE HEALTH COSTS.—

"(1) IN GENERAL.—An employer maintaining a defined benefit plan (other than a multiemployer plan) may elect for any taxable year to have the plan make a qualified future transfer rather than a qualified transfer for the taxable year. Except as provided in this subsection, a qualified future transfer shall be treated for purposes of this title and the Employee Retirement Income Security Act of 1974 as if it were a qualified transfer.

"(2) QUALIFIED FUTURE TRANSFER.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified future transfer' means a transfer which meets all of the requirements for a qualified transfer, except that—

"(i) the determination of excess pension assets shall be made under subparagraph (B),

"(ii) the limitation on the amount transferred shall be made under subparagraph (C), and

"(iii) the minimum cost requirements of subsection (c)(3) shall be modified as provided under subparagraph (D).

"(B) EXCESS PENSION ASSETS.—

"(i) IN GENERAL.—In determining excess pension assets for purposes of this subsection, subsection (e)(2) shall be applied by substituting '115 percent' for '125 percent'.

"(ii) REQUIREMENT TO MAINTAIN FUNDED STATUS.—If, as of any valuation date of any plan year in the transfer period, the amount determined under subsection (e)(2)(B) (after application of

clause (i)) exceeds the amount determined under subsection (e)(2)(A), either—

"(I) the employer maintaining the plan shall make contributions to the plan in an amount not less than the amount required to reduce such excess to zero as of such date, or

"(II) there is transferred from the health benefits account to the plan an amount not less than the amount required to reduce such excess to zero as of such date.

"(C) LIMITATION ON AMOUNT TRANSFERRED.—Notwithstanding subsection (b)(3), the amount of the excess pension assets which may be transferred in a qualified future transfer shall be equal to the sum of—

"(i) if the transfer period includes the taxable year of the transfer, the amount determined under subsection (b)(3) for such taxable year, plus

"(ii) in the case of all other taxable years in the transfer period, the sum of the qualified current retiree health liabilities which the plan reasonably estimates, in ac-

cordance with guidance issued by the Secretary, will be incurred for each of such years.

"(D) MINIMUM COST REQUIREMENTS.—

"(i) IN GENERAL.—The requirements of subsection (c)(3) shall be treated as met if each group health plan or arrangement under which applicable health benefits are provided provides applicable health benefits during the period beginning with the first year of the transfer period and ending with the last day of the 4th year following the transfer period such that the annual average amount of such benefits provided during such period is not less than the applicable employer cost determined under subsection (c)(3)(A) with respect to the transfer.

"(ii) ELECTION TO MAINTAIN BENEFITS.—An employer may elect, in lieu of the requirements of clause (i), to meet the requirements of subsection (c)(3) by meeting the requirements of such subsection (as in effect before the amendments made by section 535 of the Tax Relief Extension

Act of 1999) for each of the years described in the period under clause (i).

"(3) COORDINATION WITH OTHER TRANSFERS.—In applying subsection (b)(3) to any subsequent transfer during a taxable year in a transfer period, qualified current retiree health liabilities shall be reduced by any such liabilities taken into account with respect to the qualified future transfer to which such period relates.

"(4) TRANSFER PERIOD.—For purposes of this subsection, the term 'transfer period' means, with respect to any transfer, a period of consecutive taxable years specified in the election under paragraph (1) which begins and ends during the 10-taxable-year period beginning with the taxable year of the transfer.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 1332. SPECIAL RULES FOR FUNDING OF COLLECTIVELY BARGAINED RETIREE HEALTH BENEFITS.

(a) COLLECTIVELY BARGAINED TRANSFER TREATED AS A QUALIFIED TRANSFER.—

(1) IN GENERAL.—Section 420(b) of the Internal Revenue Code of 1986 (defining qualified transfer) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

''(5) A collectively bargained transfer (as defined in subsection (e)(5)) shall be treated as a qualified transfer.''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 420(b)(2) of such Code is amended by inserting ''or a collectively bargained transfer'' after ''paragraph (4)''.

(B) Paragraph (3) of section 420(b) of such Code is amended to read as follows:

''(3) LIMITATION ON AMOUNT TRANSFERRED.—

''(A) IN GENERAL.—The amount of excess pension assets which may be transferred in a qualified transfer (other than a collectively bargained transfer) shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of

the transfer for qualified current retiree health liabilities.

"(B) EXCEPTION FOR COLLECTIVELY BARGAINED TRANSFERS.—The amount of excess pension assets which may be transferred in a collectively bargained transfer shall not exceed the amount which is reasonably estimated, in accordance with the provisions of the collective bargaining agreement and generally accepted accounting principles, to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the collectively bargained cost maintenance period for collectively bargained retiree health liabilities.".

(b) REQUIREMENTS OF PLANS MAKING COLLECTIVELY BARGAINED TRANSFERS.—

(1) IN GENERAL.—Paragraph (1) of section 420(c) of the Internal Revenue Code of 1986 (relating to requirements of plan transferring assets) is amended to read as follows:

"(1) USE OF TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Except in the case of a collectively bargained transfer, any assets transferred to a health benefits account in a

qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) for the taxable year of the transfer (whether directly or through reimbursement).

"(B) COLLECTIVELY BARGAINED TRANSFER.—Any assets transferred to a health benefits account in a collectively bargained transfer (and any income allocable thereto) shall be used only to pay collectively bargained retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(6)(D)) for the taxable year of the transfer or for any subsequent taxable year during the collectively bargained cost maintenance period (whether directly or through reimbursement).

"(C) AMOUNTS NOT USED TO PAY FOR HEALTH BENEFITS.—

"(i) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) (in the case of

a qualified transfer other than a collectively bargained transfer) or cannot be used as provided in subparagraph (B) (in the case of a collectively bargained transfer) shall be transferred out of the account to the transferor plan.

"(ii) TAX TREATMENT OF AMOUNTS.—Any amount transferred out of an account under clause (i)—

"(I) shall not be includible in the gross income of the employer, but

"(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

"(D) ORDERING RULE.—For purposes of this section, any amount paid out of a health benefits account shall be treated as paid first out of the assets and income described in subparagraph (A) (in the case of a qualified transfer other than a collectively bargained transfer) or subparagraph (B) (in the case of a collectively bargained transfer).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 420(c)(3) of such Code is amended to read as follows:

"(A) IN GENERAL.—The requirements of this paragraph are met if—

"(i) except as provided in clause (ii), each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer, and

"(ii) in the case of a collectively bargained transfer, each collectively bargained group health plan under which collectively bargained health benefits are provided provides that the collectively bargained employer cost for each taxable year during the collectively bargained cost maintenance period shall not be less than the amount specified by the collective bargaining agreement.".

(B) Section 420(c)(3) of such Code is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) COLLECTIVELY BARGAINED EMPLOYER COST.—For purposes of this paragraph, the term 'collectively bargained employer cost' means the average cost per covered individual of providing collectively bargained retiree health benefits as determined in accordance with the applicable collective bargaining agreement. Such agreement may provide for an appropriate reduction in the collectively bargained employer cost to take into account any portion of the collectively bargained retiree health benefits that is provided or financed by a government program or other source.''.

(C) Subparagraph (E) of section 420(c)(3) of such Code (as redesignated by subparagraph (B)) is amended to read as follows:

''(E) MAINTENANCE PERIOD.—For purposes of this paragraph—

''(i) COST MAINTENANCE PERIOD.—The term 'cost maintenance period' means

the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in 2 or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A)(i) for such taxable year.

''(ii) COLLECTIVELY BARGAINED COST MAINTENANCE PERIOD.—The term 'collectively bargained cost maintenance period' means, with respect to each covered retiree and his covered spouse and dependents, the shorter of—

''(I) the remaining lifetime of such covered retiree and his covered spouse and dependents, or

''(II) the period of coverage provided by the collectively bargained health plan (determined as of the date of the collectively bargained transfer) with respect to such covered retiree and his covered spouse and dependents.''.

(c) LIMITATIONS ON EMPLOYER.—Subsection (d) of section 420 of the Internal Revenue Code of 1986 is amended to read as follows:

"(d) LIMITATIONS ON EMPLOYER.—For purposes of this title—

"(1) DEDUCTION LIMITATIONS.—No deduction shall be allowed—

"(A) for the transfer of any amount to a health benefits account in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(C)),

"(B) for qualified current retiree health liabilities or collectively bargained retiree health liabilities paid out of the assets (and income) described in subsection (c)(1), or

"(C) except in the case of a collectively bargained transfer, for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree health liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

"(i) the amount determined under subparagraph (A) (and income allocable thereto), over

1 "(ii) the amount determined under
2 subparagraph (B).
3 "(2) OTHER LIMITATIONS.—
4 "(A) NO CONTRIBUTIONS ALLOWED.—Ex-
5 cept as provided in subparagraph (B), an em-
6 ployer may not contribute after December 31,
7 1990, any amount to a health benefits account
8 or welfare benefit fund (as defined in section
9 419(e)(1)) with respect to qualified current re-
10 tiree health liabilities for which transferred as-
11 sets are required to be used under subsection
12 (c)(1)(A).
13 "(B) EXCEPTION.—An employer may con-
14 tribute an amount to a health benefits account
15 or welfare benefit fund (as defined in section
16 419(e)(1)) with respect to collectively bargained
17 retiree health liabilities for which transferred
18 assets are required to be used under subsection
19 (c)(1)(B), and the deductibility of any such con-
20 tribution shall be governed by the limits appli-
21 cable to the deductibility of contributions to a
22 welfare benefit fund under a collective bar-
23 gaining agreement (as determined under section
24 419A(f)(5)(A)) without regard to whether such
25 contributions are made to a health benefits ac-

count or welfare benefit fund and without regard to the provisions of section 404 or the other provisions of this section. The Secretary shall provide rules to ensure that the application of this section does not result in a deduction being allowed more than once for the same contribution or for 2 or more contributions or expenditures relating to the same collectively bargained retiree health liabilities.''.

(d) DEFINITIONS.—Section 420(e) of the Internal Revenue Code of 1986 (relating to definition and special rules) is amended by adding at the end the following new paragraphs:

''(5) COLLECTIVELY BARGAINED TRANSFER.—The term 'collectively bargained transfer' means a transfer—

''(A) of excess pension assets to a health benefits account which is part of such plan in a taxable year beginning after December 31, 2005, and

''(B) which does not contravene any other provision of law,

''(C) with respect to which are met in connection with the plan—

"(i) the use requirements of subsection (c)(1),

"(ii) the vesting requirements of subsection (c)(2), and

"(iii) the minimum cost requirements of subsection (c)(3),

"(D) which is made in accordance with a collective bargaining agreement,

"(E) which, before the transfer, the employer designates, in a written notice delivered to each employee organization that is a party to the collective bargaining agreement, as a collectively bargained transfer in accordance with this section, and

"(F) which involves—

"(i) a plan maintained by an employer which, in its taxable year ending in 2005, provided health benefits or coverage to retirees and their spouses and dependents under all of the benefit plans maintained by the employer, but only if the aggregate cost (including administrative expenses) of such benefits or coverage which would have been allowable as a deduction to the employer (if such benefits or coverage had

been provided directly by the employer and the employer used the cash receipts and disbursements method of accounting) is at least 5 percent of the gross receipts of the employer (determined in accordance with the last sentence of subsection (c)(2)(E)(ii)(II)) for such taxable year,

"(ii) or a plan maintained by a successor to such employer.

Such term shall not include a transfer after December 31, 2013.

"(6) COLLECTIVELY BARGAINED RETIREE HEALTH LIABILITIES.—

"(A) IN GENERAL.—The term 'collectively bargained retiree health liabilities' means the present value, as of the beginning of a taxable year and determined in accordance with the applicable collective bargaining agreement, of all collectively bargained health benefits (including administrative expenses) for such taxable year and all subsequent taxable years during the collectively bargained cost maintenance period.

"(B) REDUCTION FOR AMOUNTS PREVIOUSLY SET ASIDE.—The amount determined under subparagraph (A) shall be reduced by the

value (as of the close of the plan year preceding the year of the collectively bargained transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the collectively bargained retiree health liabilities.

"(C) KEY EMPLOYEES EXCLUDED.—If an employee is a key employee (within the meaning of section 416(I)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing collectively bargained retiree health liabilities for such taxable year or in calculating collectively bargained employer cost under subsection (c)(3)(C).

"(7) COLLECTIVELY BARGAINED HEALTH BENEFITS.—The term 'collectively bargained health benefits' means health benefits or coverage which are provided to—

"(A) retired employees who, immediately before the collectively bargained transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and their spouses and dependents, and

"(B) if specified by the provisions of the collective bargaining agreement governing the collectively bargained transfer, active employees who, following their retirement, are entitled to receive such benefits and who are entitled to pension benefits under the plan, and their spouses and dependents.

"(8) COLLECTIVELY BARGAINED HEALTH PLAN.—The term 'collectively bargained health plan' means a group health plan or arrangement for retired employees and their spouses and dependents that is maintained pursuant to 1 or more collective bargaining agreements.".

(e) CONFORMING AMENDMENT.—The last sentence of section 401(h) of the Internal Revenue Code of 1986 is amended by inserting "(other than contributions with respect to collectively bargained retiree health liabilities within the meaning of section 420(e)(6))" after "medical benefits".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2004.

SEC. 1333. ALLOWANCE OF RESERVE FOR MEDICAL BENEFITS OF PLANS SPONSORED BY BONA FIDE ASSOCIATIONS.

(a) IN GENERAL.—Section 419A(c) of the Internal Revenue Code of 1986 (relating to account limit) is amended by adding at the end the following new paragraph:

"(6) ADDITIONAL RESERVE FOR MEDICAL BENEFITS OF BONA FIDE ASSOCIATION PLANS.—

"(A) IN GENERAL.—An applicable account limit for any taxable year may include a reserve in an amount not to exceed 35 percent of the sum of—

"(i) the qualified direct costs, and

"(ii) the change in claims incurred but unpaid,

for such taxable year with respect to medical benefits (other than post-retirement medical benefits).

"(B) APPLICABLE ACCOUNT LIMIT.—For purposes of this subsection, the term 'applicable account limit' means an account limit for a qualified asset account with respect to medical benefits provided through a plan maintained by a bona fide association (as defined in section

2791(d)(3) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(3))''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after December 31, 2005.

PART II—CASH OR DEFERRED ARRANGEMENTS

SEC. 1336. TREATMENT OF ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—Section 414 of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new subsection:

''(x) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

''(1) GENERAL RULE.—Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which are part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan.

''(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'eligible combined plan' means a plan—

"(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

"(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

"(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

"(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term 'small employer' has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting '500' for '50' each place it appears.

1 "(B) BENEFIT REQUIREMENTS.—

2 "(i) IN GENERAL.—The benefit re-
3 quirements of this subparagraph are met
4 with respect to the defined benefit plan
5 forming part of the eligible combined plan
6 if the accrued benefit of each participant
7 derived from employer contributions, when
8 expressed as an annual retirement benefit,
9 is not less than the applicable percentage
10 of the participant's final average pay. For
11 purposes of this clause, final average pay
12 shall be determined using the period of
13 consecutive years (not exceeding 5) during
14 which the participant had the greatest ag-
15 gregate compensation from the employer.

16 "(ii) APPLICABLE PERCENTAGE.—For
17 purposes of clause (i), the applicable per-
18 centage is the lesser of—

19 "(I) 1 percent multiplied by the
20 number of years of service with the
21 employer, or

22 "(II) 20 percent.

23 "(iii) SPECIAL RULE FOR CASH BAL-
24 ANCE PLANS.—If the defined benefit plan
25 under clause (i) is a qualified cash balance

plan (within the meaning of section 411(b)(5)), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

"If the participant's age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

"(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

"(C) CONTRIBUTION REQUIREMENTS.—

"(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable defined contribu-

tion plan forming part of eligible combined plan are met if—

"(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

"(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

"(ii) NONELECTIVE CONTRIBUTIONS.—An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining

whether the requirements of clause (i)(II) are met.

"(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

"(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

"(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

"(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

"(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

"(E) UNIFORM PROVISION OF BENEFITS.—In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

"(F) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS OR OTHER PLANS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS.—The requirements of this clause are met if—

"(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l), and

"(II) the requirements of sections 401(a)(4) and 410(b) are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(l).

"(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

"(3) NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

"(A) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

"(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

"(4) SATISFACTION OF TOP-HEAVY RULES.—A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

"(5) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

"(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

"(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

"(ii) meets the notice requirements under subparagraph (B).

"(B) NOTICE REQUIREMENTS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

"(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

"(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

"(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

"(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

"(6) COORDINATION WITH OTHER REQUIREMENTS.—

"(A) TREATMENT OF SEPARATE PLANS.—Section 414(k) shall not apply to an eligible combined plan.

"(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

"(7) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable defined contribution plan' means a defined contribution plan which includes a qualified cash or deferred arrangement.

"(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—The term 'qualified cash or deferred arrangement' has the meaning given such term by section 401(k)(2).".

(b) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 210 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

"(e) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

"(1) GENERAL RULE.—Except as provided in this subsection, this Act shall be applied to any de-

fined benefit plan or applicable individual account plan which are part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan.

"(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'eligible combined plan' means a plan—

"(i) which, at the time the plan is established, is maintained by a small employer,

"(ii) which consists of a defined benefit plan and an applicable individual account plan each of which qualifies under section 401(a) of the Internal Revenue Code of 1986,

"(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable individual account plan to the extent necessary for the separate application of this Act under paragraph (1), and

"(iv) with respect to which the benefit, contribution, vesting, and non-

discrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term 'small employer' has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting '500' for '50' each place it appears.

''(B) BENEFIT REQUIREMENTS.—

''(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

"(I) 1 percent multiplied by the number of years of service with the employer, or

"(II) 20 percent.

"(iii) SPECIAL RULE FOR CASH BALANCE PLANS.—If the defined benefit plan under clause (i) is a qualified cash balance plan (within the meaning of section 204(b)(5)), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

"If the participant's age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

"(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (1), (2), and (3) of section

203(b), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

''(C) CONTRIBUTION REQUIREMENTS.—

''(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of eligible combined plan are met if—

''(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

''(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) of the Internal Revenue Code of 1986 shall apply for purposes of this clause.

"(ii) NONELECTIVE CONTRIBUTIONS.—An applicable individual account plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

"(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

"(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

"(ii) in the case of an applicable individual account plan forming part of eligible combined plan—

"(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

"(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 203 shall apply to the extent not inconsistent with this subparagraph.

"(E) UNIFORM PROVISION OF BENEFITS.—In the case of a defined benefit plan or

applicable individual account plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

"(F) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS OR OTHER PLANS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS.—The requirements of this clause are met if—

"(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l) of the Internal Revenue Code of 1986, and

"(II) the requirements of sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 are met with respect to both the applicable defined contribution plan and defined benefit

plan forming part of an eligible combined plan without regard to section 401(l) of the Internal Revenue Code of 1986.

"(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan.

"(3) NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

"(A) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable individual account plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) of the Internal Revenue Code of 1986 if the requirements of subparagraph (C) are met with respect to such arrangement.

"(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) of such Code to any

matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A) of such Code.

"(4) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

"(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

"(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

"(ii) meets the notice requirements under subparagraph (B).

"(B) NOTICE REQUIREMENTS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

"(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

"(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

"(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

"(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) of the Internal Revenue Code of 1986 shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

''(5) COORDINATION WITH OTHER REQUIREMENTS.—

''(A) TREATMENT OF SEPARATE PLANS.—Section 414(k) of the Internal Revenue Code of 1986 shall not apply to an eligible combined plan.

''(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of section 103.

''(6) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'applicable individual account plan' means an individual account plan which includes a qualified cash or deferred arrangement.

''(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—The term 'qualified cash or deferred arrangement' has the meaning given such term by section 401(k)(2) of the Internal Revenue Code of 1986.''.

(2) CONFORMING CHANGES.—

(A) The heading for section 210 of such Act is amended to read as follows:

"SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPECIAL RULES.".

(B) The table of contents in section 1 of such Act is amended by striking the item relating to section 210 and inserting the following new item:

"Sec. 210. Multiple employer plans and other special rules".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2008.

SEC. 1337. STATE AND LOCAL GOVERNMENTS ELIGIBLE TO MAINTAIN SECTION 401(k) PLANS.

(a) IN GENERAL.—Clause (ii) of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (relating to governments ineligible) is amended to read as follows:

"(ii) GOVERNMENTS ELIGIBLE.—A State or local government or political subdivision thereof, or any agency or instrumentality thereof, may include a qualified cash or deferred arrangement as part of a plan maintained by it."

(b) COORDINATION WITH SECTION 457 LIMITS.—Section 402(g) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

"(9) COORDINATION OF SECTION 457 LIMITS FOR STATE AND LOCAL GOVERNMENTAL PLANS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of an individual who is a participant in 1 or more qualified cash or deferred arrangements maintained by a governmental entity described in section 401(k)(4)(B)(ii), the amount excludable from gross income under paragraph (1) with respect to the individual for any taxable year with respect to elective deferrals under such arrangements shall be reduced by the aggregate amounts deferred under section 457 with respect to the individual for the taxable year under 1 or more eligible deferred compensation plans (as defined in section 457(b)) maintained by an employer described in section 457(e)(1)(A).

"(B) SPECIAL RULE FOR PRE-1986 GRANDFATHERED PLANS.—Subparagraph (A) shall not apply to any qualified cash or deferred arrangement maintained by a governmental entity

described in section 401(k)(4)(B)(ii) if the arrangement (or any predecessor) was adopted by the entity before May 6, 1986, or treated as so adopted under section 1116(f)(2)(B) of the Tax Reform Act of 1986.''

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

PART III—EXCESS CONTRIBUTIONS

SEC. 1339. EXCESS CONTRIBUTIONS.

(a) EXPANSION OF CORRECTIVE DISTRIBUTION PERIOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—Subsection (f) of section 4979 of the Internal Revenue Code of 1986 is amended—

(1) by and inserting ''(6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))'' after ''2½ months'' in paragraph (1), and

(2) by striking ''2½ MONTHS OF'' in the heading and inserting ''SPECIFIED PERIOD AFTER''.

(b) YEAR OF INCLUSION.—Paragraph (2) of section 4979(f) of such Code is amended to read as follows:

''(2) YEAR OF INCLUSION.—Any amount distributed as provided in paragraph (1) shall be treat-

ed as earned and received by the recipient in the recipient's taxable year in which such distributions were made.''.

(c) SIMPLIFICATION OF ALLOCABLE EARNINGS.—

(1) SECTION 4979.—Subsection (f) of section 4979 of such Code is amended—

(A) by adding ''through the end of the plan year for which the contribution was made'' after ''thereto'' in paragraph (1), and

(B) by adding ''through the end of the plan year for which the contributions were made'' after ''thereto'' in paragraph (2)(B).

(2) SECTION 401(k) AND 401(M).—

(A) Clause (i) of section 401(k)(8)(A) is amended by adding ''through the end of such year'' after ''such contributions''.

(B) Subparagraph (A) of section 401(m)(6) of such Code is amended by adding ''through the end of such year'' after ''to such contributions''.

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

PART IV—OTHER PROVISIONS

SEC. 1341. AMENDMENTS RELATING TO PROHIBITED TRANSACTIONS.

(a) EXEMPTION FOR BLOCK TRADING.—

(1) IN GENERAL.—Section 408(b) of the Employee Retirement Income Security Act (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

"(14) BLOCK TRADING.—

"(A) IN GENERAL.—Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary who has investment discretion or control with respect to the assets involved in the transaction or is providing investment advice as a fiduciary for purposes of this title to enter into the transaction) with respect to a plan if—

"(i) the transaction involves a block trade,

"(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor) does not exceed 10 percent of the aggregate size of the block trade,

"(iii) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction, and

"(iv) compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party.

"(B) BLOCK TRADE.—For purposes of this paragraph, the term 'block trade' includes any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.".

(2) CONFORMING AMENDMENTS.—

(A) Section 4975(d) of such Code is amended—

(i) by striking "or" at the end of paragraph (15),

(ii) by striking the period at the end of paragraph (16)(F) and inserting "; or", and

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

"(17) any transaction involving the purchase or sale of securities between a plan and a disqualified person (other than a fiduciary who has investment discretion or control over the transaction or is providing investment advice as a fiduciary for purposes of title I of the Employee Retirement Income Security Act to enter into the transaction) with respect to a plan if—

"(A) the transaction involves a block trade,

"(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor) does not exceed 10 percent of the aggregate size of the block trade,

"(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction, and

"(D) compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party.".

(B) Section 4975(e) of such Code is amended by adding at the end the following new paragraph:

"(11) BLOCK TRADE.—The term 'block trade' includes any trade of at least 10,000 shares or with

a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.''.

(b) BONDING RELIEF.—Section 412(a) of such Act (29 U.S.C. 1112(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3),

(2) by striking ''and'' at the end of paragraph (1), and

(3) by inserting after paragraph (1) the following new paragraph:

''(2) no bond shall be required of any entity which is registered as a broker or a dealer under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) if the broker or dealer is subject to the fidelity bond requirements of a self-regulatory organization (within the meaning of section 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)).''.

(c) EXEMPTION FOR FINANCIAL MARKETS TRADING SYSTEMS.—

(1) IN GENERAL.—Section 408(b) of such Act, as amended by subsection (b)(1), is amended by adding at the end the following new paragraph:

''(15) FINANCIAL MARKETS TRADING SYSTEMS.—Any transaction involving the purchase and

sale of securities between a plan and a fiduciary or a party in interest if—

"(A) the transaction is executed through—

"(i) a national securities exchange or a trading system owned by a national securities association registered with the Securities and Exchange Commission, regardless of whether such fiduciary or party in interest (or any affiliate of either) has an interest in such exchange or trading system,

"(ii) an alternative trading system or electronic communication network subject to regulation and oversight by the Securities and Exchange Commission, regardless of whether such fiduciary or party in interest (or any affiliate of either) has an interest in such alternative trading system or electronic communications network, or

"(iii) any other trading system for securities or other property approved by the Secretary through regulatory or exemptive relief,

"(B) the price associated with the purchase and sale is at least as favorable as an

arm's length transaction with an unrelated party,

"(C) the compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party,

"(D) in the event the fiduciary or party in interest directing the transaction (or any affiliate of either) has an ownership interest in the trading system (other than an exchange or trading system described in subparagraph (A)(i)), the execution of transactions on such system is annually authorized by a plan fiduciary,

"(E) the transaction is executed in accordance with the nondiscretionary rules and procedures adopted by such trading system to match offsetting orders, and

"(F) in the event the transaction is not executed on an exchange or trading system described in subparagraph (A)(i)—

"(i) neither the trading system nor the parties to the transaction take into account the identity of the parties in the execution of trades, and the parties to the transaction do not actually know the iden-

tity of the other at the time that the terms and price of the transaction are agreed to, or

"(ii) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the trading system.".

(2) CONFORMING AMENDMENT.—Section 4975(d) of such Code (as amended by subsection (b)(2)) is amended—

(A) by striking "or" at the end of paragraph (16),

(B) by striking the period at the end of paragraph (17)(E) and inserting "; or", and

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

"(18) any transaction involving the purchase and sale of securities or other property between a plan and a fiduciary or a disqualified person if—

"(A) the transaction is executed through—

"(i) a national securities exchange or a trading system owned by a national securities association registered with the Securities and Exchange Commission, regardless of whether such fiduciary or disquali-

fied person (or any affiliate of either) has an interest in such exchange or trading system,

"(ii) an alternative trading system or electronic communication network subject to regulation and oversight by the Securities and Exchange Commission, regardless of whether such fiduciary or disqualified person (or any affiliate of either) has an interest in such alternative trading system or electronic communications network, or

"(iii) any other trading system for securities or other property approved by the Secretary through regulatory or exemptive relief,

"(B) the price associated with the purchase and sale is at least as favorable as an arm's length transaction with an unrelated party,

"(C) the compensation associated with the purchase and sale is not greater than an arm's length transaction with an unrelated party,

"(D) in the event the fiduciary or disqualified person directing the transaction (or any affiliate of either) has an ownership interest in

the trading system (other than an exchange or trading system described in subparagraph (A)(i)), the execution of transactions on such system is annually authorized by a plan fiduciary,

''(E) the transaction is executed in accordance with the nondiscretionary rules and procedures adopted by such trading system to match offsetting orders, and

''(F) in the event the transaction is not executed on an exchange or trading system described in subparagraph (A)(i)—

''(i) neither the trading system nor the parties to the transaction take into account the identity of the parties in the execution of trades, and the parties to the transaction do not actually know the identity of the other at the time that the terms and price of the transaction are agreed to, or

''(ii) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the trading system.''.

(d) RELIEF FOR FOREIGN EXCHANGE TRANSACTIONS.—

(1) IN GENERAL.—Section 408(b) of such Act (29 U.S.C. 1108(b)), as amended by subsection (c)(1), is amended by adding at the end the following new paragraph:

"(16) Any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either), and a plan or an individual retirement account (within the meaning of section 408 of the Internal Revenue Code of 1986) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other party in interest, if—

"(A) the transaction is in connection with the purchase, holding, or sale of securities,

"(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

"(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more or less than 3 percent from the interbank bid and asked rates at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

"(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.".

(2) CONFORMING AMENDMENT.—Section 4975(d) of such Code, as amended by subsection (c)(2), is amended—

(A) by striking "or" at the end of paragraph (17)(E),

(B) by striking the period at the end of paragraph (18)(F)(ii) and inserting "; or", and

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

"(19) any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan or an individual retirement account (within the meaning of section 408) with respect to

which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or disqualified person, if—

"(A) the transaction is in connection with the purchase, holding, or sale of securities,

"(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

"(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more or less than 3 percent from the interbank bid and asked rates at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

"(D) the bank or broker-dealer (or any affiliate of either) does not have investment dis-

cretion, or provide investment advice, with respect to the transaction.''.

(e) CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.—

(1) IN GENERAL.—Section 408(b) of such Act (29 U.S.C. 1108(b)), as amended by subsection (d)(1), is amended by adding at the end the following new paragraph:

''(17) CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), a transaction described in section 406(a) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

''(B) EXCEPTION FOR EMPLOYER SECURITIES AND REAL PROPERTY.—Subparagraph (A) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

"(C) EXCEPTION FOR KNOWING VIOLATIONS.—In the case of any fiduciary or other party in interest (or any other person knowingly participating in such transaction), subparagraph (A) does not apply to any prohibited transaction if, at the time such transaction occurs, such fiduciary or party in interest (or other person) knew that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

"(D) CORRECTION PERIOD.—For purposes of this paragraph, the term 'correction period' means the 14-day period beginning on the date on which such transaction occurs.

"(E) OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof),

"(ii) the term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof), and

"(iii) the terms 'correction' and 'correct' mean, with respect to a transaction, undoing the transaction to the extent possible, but in any case, making good to the plan or affected account any losses resulting from the transaction and restoring to the plan or affected account any profits made through use of the plan.".

(2) CONFORMING AMENDMENTS.—

(A) Section 4975(d) of such Code, as amended by subsection (d)(2), is amended—

(i) by striking "or" at the end of paragraph (18)(F)(2),

(ii) by striking the period at the end of paragraph (19)(D) and inserting "; or", and

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

"(20) except as provided in subparagraph (B) or (C) of subsection (f)(8), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.".

(B) Section 4975(f) of such Code is amended by adding at the end the following new paragraph:

''(8) CORRECTION PERIOD.—

''(A) IN GENERAL.—For purposes of subsection (d)(20), the term 'correction period' means the 14-day period beginning on the date on which such transaction occurs.

''(B) EXCEPTION FOR EMPLOYER SECURITIES AND REAL PROPERTY.—Subsection (d)(20) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1) of the Employee Retirement Income Security Act) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) of such Act).

''(C) EXCEPTION FOR KNOWING VIOLATIONS.—In the case of any fiduciary or other disqualified person (or any other person knowingly participating in such transaction), subsection (d)(20) does not apply to any prohibited transaction if, at the time such transaction occurs, such fiduciary or disqualified person (or

other person) knew that the transaction would (without regard to subsection (d)(20) or this paragraph) constitute a violation of subparagraph (A), (B), (C), or (D) of subsection (c)(1).

"(D) ABATEMENT OF TAX WHERE THERE IS A CORRECTION.—If a transaction is not treated as a prohibited transaction by reason of subsection (d)(20), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and, if assessed, the assessment shall be abated, and, if collected, shall be credited or refunded as an overpayment.

"(E) OTHER DEFINITIONS.—For purposes of this paragraph and subsection (d)(20)—

"(i) the term 'security' has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof),

"(ii) the term 'commodity' has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof), and

"(iii) the terms 'correction' and 'correct' mean, with respect to a transaction,

undoing the transaction to the extent possible, but in any case, making good to the plan or affected account any losses resulting from the transaction and restoring to the plan or affected account any profits made through use of the plan.''.

(C) Section 4975(f)(5) of such Code is amended by striking ''The terms'' and inserting ''Except as provided in paragraph (8)(E)(iii), the terms''.

(f) CROSS TRADES STUDY.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Labor, in consultation with the President's Working Group on Financial Markets, shall report to the President and Congress the results of a study on the implications for pension plans, plan sponsors, plan fiduciaries, and plan participants of a prohibited transaction exemption for active cross trades and the impact that such a prohibited transaction exemption could have on the safety and security of pension plan assets. The study shall review and include recommendations regarding—

(1) the regulation and practice of passive and active cross trades in United States securities markets,

(2) the potential benefits and drawbacks of permitting active cross trades for retirement funds, and

(3) the ease or difficulty in policing cross trading activities for plan sponsors, plan fiduciaries, and any Federal agency charged with safeguarding the Nation's retirement funds.

(g) GAO STUDY.—The Comptroller General of the United States shall prepare a preliminary report not later than 2 years after the date of the enactment of this Act and a final report not later than 3 years after such date regarding the effects of the amendments made by this section, focusing on the effect of electronic communication networks and block trading on plan investments and on the oversight and enforcement activities of the Department of Labor to protect the rights of plan participants and beneficiaries. The Comptroller General of the United States shall submit the reports required under the preceding sentence to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and the Workforce of the House of Representatives.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to any transaction after the date of the enactment of this Act.

SEC. 1342. FEDERAL TASK FORCE ON OLDER WORKERS.

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, the Secretary of Labor shall establish a Federal Task Force on Older Workers (referred to in this section as the ''Task Force'').

(b) MEMBERSHIP.—The Task Force established pursuant to subsection (a) shall be composed of representatives from all relevant Federal agencies that have regulatory jurisdiction over, or a clear policy interest in, pension issues relating to older workers, including the Internal Revenue Service and the Equal Employment Opportunity Commission.

(c) ACTIVITIES.—

(1) IN GENERAL.—Not later than 1 year after the date of establishment of the Task Force, the Task Force shall—

(A) identify statutory and regulatory provisions in current pension law that are disincentives to work and develop legislative and regulatory proposals to address such disincentives; and

(B) identify best pension practices in the private sector for hiring and retaining older workers, and serve as a clearinghouse of such information.

(2) REPORT.—Not later than 1 year after the date of establishment of the Task Force, the Task Force shall submit a report to Congress on the activities of the Task Force pursuant to paragraph (1). Such report shall be made available to the public.

(d) CONSULTATION.—In carrying out activities pursuant to this section, the Task Force shall consult with senior, business, labor, and other interested organizations.

(e) APPLICABILITY OF FACA; TERMINATION OF TASK FORCE.—

(1) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Task Force established pursuant to this section.

(2) TERMINATION.—The Task Force shall terminate 30 days after the date the Task Force completes all of its duties under this section.

SEC. 1343. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking ''2001 and 2005 on or after September 1 of each year involved'' and inserting ''2006 and 2010'';

(2) in subsection (b), by adding at the end the following new sentence: ''To effectuate the purposes

of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with any appropriate, qualified entity.";

(3) in subsection (e)(2)—

(A) by striking "Committee on Labor and Human Resources" in subparagraph (D) and inserting "Committee on Health, Education, Labor, and Pensions";

(B) by striking subparagraph (F) and inserting the following:

"(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;";

(C) by redesignating subparagraph (G) as subparagraph (J); and

(D) by inserting after subparagraph (F) the following new subparagraphs:

"(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

"(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

"(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and";

(4) in subsection (e)(3)(B), by striking "January 31, 1998" and inserting "3 months before the convening of each summit;";

(5) in subsection (f)(1)(C), by inserting ", no later than 90 days prior to the date of the commencement of the National Summit," after "comment";

(6) in subsection (g), by inserting ", in consultation with the congressional leaders specified in subsection (e)(2)," after "report" the first place it appears in the text;

(7) in subsection (i)—

(A) by striking "for fiscal years beginning on or after October 1, 1997,"; and

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

"(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph."; and

(8) in subsection (k)—

(A) by striking "shall enter into a contract on a sole-source basis" and inserting "may enter into a contract on a sole-source basis"; and

(B) by striking "in fiscal year 1998".

Passed the Senate November 16, 2005.

Attest:

Secretary.

109TH CONGRESS
1ST SESSION

S. 1783

AN ACT

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

December 22, 2005

Ordered to be printed as passed