

109TH CONGRESS
1ST SESSION

S. 1825

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to revise the funding and deduction rules for multiemployer defined benefit plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5, 2005

Mr. SANTORUM (for himself and Ms. STABENOW) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to revise the funding and deduction rules for multiemployer defined benefit plans, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Multiemployer Plan
5 Funding and Deduction Reform Act of 2005”.

1 **TITLE I—FUNDING RULES FOR**
 2 **MULTIEMPLOYER DEFINED**
 3 **BENEFIT PLANS**

4 **SEC. 101. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
 5 **BENEFIT PLANS.**

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

10 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER
 11 PLANS

12 “SEC. 302A. (a) IN GENERAL.—For purposes of sec-
 13 tion 302, the accumulated funding deficiency of a multi-
 14 employer plan for any plan year is—

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

22 “(2) if the multiemployer plan is in reorganiza-
 23 tion any plan year, the accumulated funding defi-
 24 ciency of the plan determined under section 4243.

25 “(b) FUNDING STANDARD ACCOUNT.—

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

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

9 “(A) the normal cost of the plan for the
10 plan year,

11 “(B) the amounts necessary to amortize in
12 equal annual installments (until fully amor-
13 tized)—

14 “(i) in the case of a plan in existence
15 on January 1, 1974, the unfunded past
16 service liability under the plan on the first
17 day of the first plan year to which this sec-
18 tion applies, over a period of 40 plan
19 years,

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

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

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

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

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

20 “(D) the amount necessary to amortize in
21 equal annual installments (until fully amor-
22 tized) over a period of 5 plan years any amount
23 credited to the funding standard account under
24 section 302(b)(3)(D) (as in effect on the day
25 before the date of the enactment of the Multi-

1 employer Plan Funding and Deduction Reform
2 Act of 2005), and

3 “(E) the amount necessary to amortize in
4 equal annual installments (until fully amor-
5 tized) over a period of 20 years the contribu-
6 tions which would be required to be made under
7 the plan but for the provisions of section 302
8 (c)(7)(A)(i)(I) (as in effect on the day before
9 the date of the enactment of the Multiemployer
10 Plan Funding and Deduction Reform Act of
11 2005).

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

15 “(A) the amount considered contributed by
16 the employer to or under the plan for the plan
17 year,

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

21 “(i) separately, with respect to each
22 plan year, the net decrease (if any) in un-
23 funded past service liability under the plan
24 arising from plan amendments adopted in
25 such year, over a period of 15 plan years,

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

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

10 “(C) the amount of the waived funding de-
11 ficiency (within the meaning of section
12 302(c)(3)) for the plan year; and

13 “(D) in the case of a plan year for which
14 the accumulated funding deficiency is deter-
15 mined under the funding standard account if
16 such plan year follows a plan year for which
17 such deficiency was determined under the alter-
18 native minimum funding standard under section
19 305 (as in effect on the day before the date of
20 the enactment of the Multiemployer Plan Fund-
21 ing and Deduction Reform Act of 2005), the
22 excess (if any) of any debit balance in the fund-
23 ing standard account (determined without re-
24 gard to this subparagraph) over any debit bal-

1 ance in the alternative minimum funding stand-
2 ard account.

3 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
4 ORTIZED TO PLAN YEARS BEFORE 2006.—In the case
5 of any amount amortized under section 302(b) (as
6 in effect on the day before the date of the enactment
7 of the Multiemployer Plan Funding and Deduction
8 Reform Act of 2005) over any period beginning with
9 a plan year beginning before 2006, in lieu of the am-
10 ortization described in paragraphs (2)(B) and
11 (3)(B), such amount shall continue to be amortized
12 under such section as so in effect.

13 “(5) COMBINING AND OFFSETTING AMOUNTS
14 TO BE AMORTIZED.—Under regulations prescribed
15 by the Secretary of the Treasury, amounts required
16 to be amortized under paragraph (2) or paragraph
17 (3), whichever is applicable—

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

23 “(B) may be offset against amounts re-
24 quired to be amortized under the other such
25 paragraph, with the resulting amount to be am-

1 ortized over a period determined on the basis of
2 the remaining amortization periods for all items
3 entering into whichever of the two amounts
4 being offset is the greater.

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

12 “(7) CERTAIN AMORTIZATION CHARGES AND
13 CREDITS.—In the case of a plan which, immediately
14 before the date of the enactment of the Multiem-
15 ployer Pension Plan Amendments Act of 1980, was
16 a multiemployer plan (within the meaning of section
17 3(37) as in effect immediately before such date)—

18 “(A) any amount described in paragraph
19 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-
20 section which arose in a plan year beginning be-
21 fore such date shall be amortized in equal an-
22 nual installments (until fully amortized) over 40
23 plan years, beginning with the plan year in
24 which the amount arose,

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

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

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

22 “(i) was adopted before such date,
23 and

24 “(ii) was effective for any plan partici-
25 pant before the beginning of the first plan

1 year beginning on or after such date, shall
2 be amortized in equal annual installments
3 (until fully amortized) over 40 plan years,
4 beginning with the plan year in which the
5 change arises.

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

9 “(A) WITHDRAWAL LIABILITY.—Any
10 amount received by a multiemployer plan in
11 payment of all or part of an employer’s with-
12 drawal liability under part 1 of subtitle E of
13 title IV shall be considered an amount contrib-
14 uted by the employer to or under the plan. The
15 Secretary of the Treasury may prescribe by reg-
16 ulation additional charges and credits to a mul-
17 tiemployer plan’s funding standard account to
18 the extent necessary to prevent withdrawal li-
19 ability payments from being unduly reflected as
20 advance funding for plan liabilities.

21 “(B) ADJUSTMENTS WHEN A MULTIEM-
22 PLOYER PLAN LEAVES REORGANIZATION.—If a
23 multiemployer plan is not in reorganization in
24 the plan year but was in reorganization in the
25 immediately preceding plan year, any balance in

1 the funding standard account at the close of
2 such immediately preceding plan year—

3 “(i) shall be eliminated by an offset-
4 ting credit or charge (as the case may be),
5 but

6 “(ii) shall be taken into account in
7 subsequent plan years by being amortized
8 in equal annual installments (until fully
9 amortized) over 30 plan years. The pre-
10 ceding sentence shall not apply to the ex-
11 tent of any accumulated funding deficiency
12 under section 4243 (a) as of the end of the
13 last plan year that the plan was in reorga-
14 nization.

15 “(C) PLAN PAYMENTS TO SUPPLEMENTAL
16 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT
17 FUND.—Any amount paid by a plan during a
18 plan year to the Pension Benefit Guaranty Cor-
19 poration pursuant to section 4222 of this Act or
20 to a fund exempt under section 501(c)(22) of
21 the Internal Revenue Code of 1986 pursuant to
22 section 4223 of this Act shall reduce the
23 amount of contributions considered received by
24 the plan for the plan year.

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

10 “(E) ELECTION FOR DEFERRAL OF
11 CHARGE FOR PORTION OF NET EXPERIENCE
12 LOSS.—If an election is in effect under section
13 302(b)(7)(F) (as in effect on the day before the
14 date of the enactment of the Multiemployer
15 Plan Funding and Deduction Reform Act of
16 2005) for any plan year, the funding standard
17 account shall be charged in the plan year to
18 which the portion of the net experience loss de-
19 ferred by such election was deferred with the
20 amount so deferred (and paragraph (2)(B)(iv)
21 shall not apply to the amount so charged).

22 “(F) FINANCIAL ASSISTANCE.—Any
23 amount of any financial assistance from the
24 Pension Benefit Guaranty Corporation to any
25 plan, and any repayment of such amount, shall

1 be taken into account under this section and
2 section 412 of the Internal Revenue Code of
3 1986 in such manner as is determined by the
4 Secretary of the Treasury.

5 “(G) SHORT-TERM BENEFITS.—To the ex-
6 tent that any plan amendment increases the un-
7 funded past service liability under the plan by
8 reason of an increase in benefits which, by its
9 terms, is payable under the plan for a period
10 that does not exceed 14 years from the effective
11 date of such amendment, paragraph (2)(B)(iii)
12 shall be applied separately with respect to such
13 increase in unfunded past service liability by
14 substituting the number of years of the period
15 during which such benefits are payable for ‘15’.

16 “(c) ADDITIONAL RULES.—

17 “(1) DETERMINATIONS TO BE MADE UNDER
18 FUNDING METHOD.—For purposes of this part, nor-
19 mal costs, accrued liability, past service liabilities,
20 and experience gains and losses shall be determined
21 under the funding method used to determine costs
22 under the plan.

23 “(2) VALUATION OF ASSETS.—

24 “(A) IN GENERAL.—For purposes of this
25 part, the value of the plan’s assets shall be de-

1 terminated on the basis of any reasonable actu-
2 arial method of valuation which takes into ac-
3 count fair market value and which is permitted
4 under regulations prescribed by the Secretary of
5 the Treasury.

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

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

1 “(A) each of which is reasonable (taking
2 into account the experience of the plan and rea-
3 sonable expectations), and

4 “(B) which, in combination, offer the actu-
5 ary’s best estimate of anticipated experience
6 under the plan.

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

10 “(A) a change in benefits under the Social
11 Security Act or in other retirement benefits cre-
12 ated under Federal or State law, or

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

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

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

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

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

9 “(6) FULL-FUNDING LIMITATION.—

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

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

19 “(ii) the lesser of—

20 “(I) the fair market value of the
21 plan’s assets, or

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

24 “(B) MINIMUM AMOUNT.—

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

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

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

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

16 “(C) FULL FUNDING LIMITATION.—For
17 purposes of this paragraph, unless otherwise
18 provided by the plan, the accrued liability under
19 a multiemployer plan shall not include benefits
20 which are not nonforfeitable under the plan
21 after the termination of the plan (taking into
22 consideration section 411(d)(3) of the Internal
23 Revenue Code of 1986).

24 “(D) CURRENT LIABILITY.—For purposes
25 of this paragraph—

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

4 “(ii) TREATMENT OF UNPREDICTABLE
5 CONTINGENT EVENT BENEFITS.—For pur-
6 poses of clause (i), any benefit contingent
7 on an event other than—

8 “(I) age, service, compensation,
9 death, or disability, or

10 “(II) an event which is reason-
11 ably and reliably predictable (as deter-
12 mined by the Secretary of the Treas-
13 ury),

14 shall not be taken into account until the
15 event on which the benefit is contingent oc-
16 curs.

17 “(iii) INTEREST RATE USED.—The
18 rate of interest used to determine current
19 liability under this paragraph shall be the
20 rate of interest determined under subpara-
21 graph (E).

22 “(iv) MORTALITY TABLES.—

23 “(I) COMMISSIONERS’ STANDARD
24 TABLE.—In the case of plan years be-
25 ginning before the first plan year to

1 which the first tables prescribed under
2 subclause (II) apply, the mortality
3 table used in determining current li-
4 ability under this paragraph shall be
5 the table prescribed by the Secretary
6 of the Treasury which is based on the
7 prevailing commissioners' standard
8 table (described in section
9 807(d)(5)(A) of the Internal Revenue
10 Code of 1986) used to determine re-
11 serves for group annuity contracts
12 issued on January 1, 1993.

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

1 pendent studies of mortality of indi-
2 viduals covered by pension plans.

3 “(v) SEPARATE MORTALITY TABLES
4 FOR THE DISABLED.—Notwithstanding
5 clause (iv)—

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

22 “(II) SPECIAL RULE FOR DIS-
23 ABILITIES OCCURRING AFTER 1994.—
24 In the case of disabilities occurring in
25 plan years beginning after December

1 31, 1994, the tables under subclause
2 (I) shall apply only with respect to in-
3 dividuals described in such subclause
4 who are disabled within the meaning
5 of title II of the Social Security Act
6 and the regulations thereunder.

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

16 “(E) REQUIRED CHANGE OF INTEREST
17 RATE.—For purposes of determining a plan’s
18 current liability for purposes of this para-
19 graph—

20 “(i) IN GENERAL.—If any rate of in-
21 terest used under the plan under sub-
22 section (b)(6) to determine cost is not
23 within the permissible range, the plan shall
24 establish a new rate of interest within the
25 permissible range.

1 “(ii) PERMISSIBLE RANGE.—For pur-
2 poses of this subparagraph—

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

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

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

1 “(I) determined without taking
2 into account the experience of the
3 plan and reasonable expectations, but

4 “(II) consistent with the assump-
5 tions which reflect the purchase rates
6 which would be used by insurance
7 companies to satisfy the liability
8 under the plan.

9 “(7) ANNUAL VALUATION.—

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

18 “(B) VALUATION DATE.—

19 “(i) CURRENT YEAR.—Except as pro-
20 vided in clause (ii), the valuation referred
21 to in subparagraph (A) shall be made as of
22 a date within the plan year to which the
23 valuation refers or within one month prior
24 to the beginning of such year.

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

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

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

24 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
25 DEEMED MADE.—For purposes of this section, any

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

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

16 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
17 MULTIEMPLOYER PLANS.—In the case of a multiemployer
18 plan—

19 “(1) EXTENSION.—The period of years re-
20 quired to amortize any unfunded liability (described
21 in any clause of subsection (b)(2)(B) or (b)(4)) of
22 any multiemployer plan meeting the criteria of para-
23 graph (2) shall be extended (in addition to any ex-
24 tension under paragraph (2)) by the Secretary of the

1 Treasury for a period of time as requested by the
2 plan in its application, but not in excess of 5 years.

3 “(2) CRITERIA.—A multiemployer pension plan
4 meets the criteria of this paragraph if its actuary
5 certifies that, based on reasonable assumptions—

6 “(A) absent the extension, the plan would
7 have an accumulated funding deficiency in the
8 current plan year or any of the 9 succeeding
9 plan years,

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

12 “(C) the plan is projected to have suffi-
13 cient assets to timely pay expected benefits and
14 anticipated expenditures over the amortization
15 period as extended.

16 “(3) ADDITIONAL EXTENSION.—The period of
17 years required to amortize any unfunded liability
18 (described in any clause of subsection (b)(2)(B) or
19 (b)(4)) of any multiemployer plan may be extended
20 (in addition to any extension under paragraph (1))
21 by the Secretary of the Treasury for a period of time
22 (not in excess of 5 years) if such Secretary deter-
23 mines that such extension would carry out the pur-
24 poses of this Act and would provide adequate protec-
25 tion for participants under the plan and their bene-

1 ficiaries and if he determines that the failure to per-
2 mit such extension would—

3 “(A) result in—

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

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

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

11 The Secretary shall act upon any application for an
12 extension under this paragraph within 180 days of
13 the submission of such application. If the Secretary
14 rejects the application for an extension under this
15 paragraph, the Secretary shall provide notice to the
16 plan detailing the specific reasons for the rejection,
17 including references to the criteria set forth above.

18 “(4) ADVANCE NOTICE.—

19 “(A) IN GENERAL.—The Secretary of the
20 Treasury shall, before granting an extension
21 under this section, require each applicant to
22 provide evidence satisfactory to such Secretary
23 that the applicant has provided notice of the fil-
24 ing of the application for such extension to each
25 affected party (as defined in section

1 4001(a)(21)) with respect to the affected plan.
2 Such notice shall include a description of the
3 extent to which the plan is funded for benefits
4 which are guaranteed under title IV and for
5 benefit liabilities.

6 “(B) CONSIDERATION OF RELEVANT IN-
7 FORMATION.—The Secretary of the Treasury
8 shall consider any relevant information provided
9 by a person to whom notice was given under
10 paragraph (1).”.

11 (b) SHORTFALL FUNDING METHOD.—

12 (1) IN GENERAL.—A multiemployer plan meet-
13 ing the criteria of paragraph (2) shall be permitted
14 to adopt, or to cease using, the shortfall funding
15 method. The adoption and use of such funding
16 method, and the voluntary cessation of the use of
17 such method, shall be deemed approved by the Sec-
18 retary under section 302(c)(5).

19 (2) CRITERIA.—A multiemployer pension plan
20 meets the criteria of this clause if—

21 (A) 5 plan years have elapsed since the
22 plan last elected to use (or cease the use of) the
23 shortfall funding method, and

1 (B) the plan is not operating under an am-
2 ortionization period extension under subsection
3 (d).

4 (3) SHORTFALL FUNDING METHOD DEFINED.—
5 As used in this subparagraph, the term “shortfall
6 funding method” means the shortfall funding meth-
7 od described in section 1.412(c)(1)–2 of title 26 of
8 the Code of Federal Regulations (26 C.F.R.
9 1.412(c)(1)–2).

10 (4) SECTION 302(c)(7) RESTRICTIONS TO
11 APPLY.—In the case of a multiemployer plan that is
12 on the shortfall funding method pursuant to this
13 subparagraph, the benefit restrictions in section
14 302(c)(7) shall apply.

15 (5) USE OF SHORTFALL METHOD NOT TO PRE-
16 CLUDE OTHER OPTIONS.—Nothing in this subsection
17 shall be construed to affect a multiemployer plan’s
18 ability to adopt the shortfall funding method with
19 the Secretary of the Treasury’s permission under
20 otherwise applicable regulations or to affect a multi-
21 employer plan’s right to change funding methods,
22 with or without the Secretary of the Treasury’s con-
23 sent, as provided in applicable rules and regulations
24 under this subsection.

25 (c) CONFORMING AMENDMENTS.—

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

4 (2) The table of contents in section 1 of such
5 Act is amended further by inserting after the item
6 relating to section 302 the following new item:

“Sec. 302A. Minimum funding standards for multiemployer plans.”.

7 (d) EFFECTIVE DATE.—

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

11 (2) GRANDFATHER.—An extension under sec-
12 tion 304 of the Employee Retirement Security Act
13 of 1974 granted by the Secretary with respect to
14 any application filed with the Secretary on or before
15 June 30, 2005 will be grandfathered and the inter-
16 est rate will be determined, for the duration of the
17 extension and any modification of the extension ap-
18 proved by the Secretary, based upon the provisions
19 of section 304(a) of the Employee Retirement Secu-
20 rity Act of 1974 as in effect prior to the date of en-
21 actment of this Act.

1 **SEC. 102. ADDITIONAL FUNDING RULES FOR MULTIEM-**
2 **EMPLOYER PLANS IN ENDANGERED OR CRIT-**
3 **ICAL STATUS.**

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

8 “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER
9 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

10 “SEC. 302B. (a) ANNUAL CERTIFICATION BY PLAN
11 ACTUARY.—

12 “(1) IN GENERAL.—During the 90-day period
13 beginning on the first day of each plan year of a
14 multiemployer plan, the plan actuary shall certify to
15 the Secretary of the Treasury whether or not the
16 plan is in endangered status for such plan year and
17 whether or not the plan is in critical status for such
18 plan year.

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

21 “(A) IN GENERAL.—In making the deter-
22 minations and projections under paragraph (1)
23 and subsections (b)(2) and (c)(2), the plan ac-
24 tuary shall make projections required for the
25 current and succeeding plan years, using rea-
26 sonable actuarial estimates, assumptions and

1 methods, of the current value of the assets of
2 the plan, and the present value of all liabilities
3 to participants and beneficiaries under the plan
4 for the current plan year as of the beginning of
5 such year. The present value of liabilities as of
6 the beginning of such year shall be determined
7 based on the actuarial statement required under
8 section 103(d) with respect to the most recently
9 filed annual report or the actuarial valuation
10 for the preceding plan year.

11 “(B) DETERMINATIONS OF FUTURE CON-
12 TRIBUTIONS.—Any such actuarial projection of
13 plan assets shall assume—

14 “(i) reasonably anticipated employer
15 contributions for the current and suc-
16 ceeding plan years, assuming that the
17 terms of the 1 or more collective bar-
18 gaining agreements pursuant to which the
19 plan is maintained for the current plan
20 year continue in effect for succeeding plan
21 years, or

22 “(ii) that employer contributions for
23 the most recent plan year will continue in-
24 definitely, but only if the plan actuary de-
25 termines there have been no significant de-

1 mographic changes that would make such
2 assumption unreasonable.

3 “(3) PENALTY FOR FAILURE TO SECURE TIME-
4 LY ACTUARIAL CERTIFICATION.—Failure of the ac-
5 tuary to certify the plan’s status under this sub-
6 section by the date specified in paragraph (1), shall
7 be treated for purposes of section 502(c)(2) as a
8 failure or refusal by the plan administrator to file
9 the annual report required to be filed with the Sec-
10 retary under section 101(b)(4).

11 “(4) NOTICE.—In any case in which a multiem-
12 ployer plan is certified to be in endangered or crit-
13 ical status under paragraph (1), the plan sponsor
14 shall, not later than 30 days after the date of the
15 certification, provide notification of the endangered
16 or critical status to the participants and bene-
17 ficiaries, the bargaining parties, the Pension Benefit
18 Guaranty Corporation, the Secretary of the Treas-
19 ury, and the Secretary of Labor.

20 “(b) FUNDING RULES FOR MULTIEMPLOYER PLANS
21 IN ENDANGERED STATUS.—

22 “(1) IN GENERAL.—In any case in which a
23 multiemployer plan is in endangered status for a
24 plan year and no funding improvement plan under
25 this subsection with respect to such multiemployer

1 plan is in effect for the plan year, the plan sponsor
2 shall, in accordance with this subsection, adopt a
3 funding improvement plan not later than 240 days
4 following the required date for the actuarial certifi-
5 cation of endangered status under subsection (a)(1).

6 “(2) ENDANGERED STATUS.—A multiemployer
7 plan is endangered for a plan year if, as determined
8 by the plan actuary under subsection (a), the plan
9 is not in critical status for the plan year and ei-
10 ther—

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

13 “(B) the plan has an accumulated funding
14 deficiency for such plan year under section
15 302A or is projected to have such an accumu-
16 lated funding deficiency for any of the 6 suc-
17 ceeding plan years, taking into account any ex-
18 tension of amortization periods under section
19 302A(d).

20 “(3) FUNDING IMPROVEMENT PLAN.—A fund-
21 ing improvement plan shall consist of actions, in-
22 cluding actions to be proposed to the bargaining par-
23 ties, formulated to provide, under reasonable actu-
24 arial assumptions, for the attainment of (A) or (B)
25 below, as applicable:

1 “(A) CERTAIN ENDANGERED PLANS.—In
2 the case of an endangered plan to which para-
3 graph (2)(B) does not apply, an increase in the
4 plan’s funded percentage by the end of the
5 funding improvement period.

6 “(B) ALL OTHER ENDANGERED PLANS.—
7 In the case of an endangered plan described in
8 paragraph (2)(B)—

9 “(i) an increase in the plan’s funded
10 percentage such that—

11 “(I) the difference between 100
12 percent and the plan’s funded per-
13 centage at the end of the funding im-
14 provement period is not more than,

15 “(II) $\frac{2}{3}$ of the difference between
16 100 percent and the plan’s funded
17 percentage at the beginning of the
18 funding improvement period.

19 “(ii) no accumulated funding defi-
20 ciency for any plan year during the fund-
21 ing improvement period (taking into ac-
22 count any extension of amortization peri-
23 ods under section 302A(d)).

24 “(C) FUNDING IMPROVEMENT PERIOD.—
25 The funding improvement period for any fund-

1 ing improvement plan adopted pursuant to this
2 subsection is the 10-year period beginning on
3 the first day of the first plan year of the multi-
4 employer plan following the earlier of —

5 “(i) the second anniversary of the
6 date of the adoption of the funding im-
7 provement plan, or

8 “(ii) the expiration of the collective
9 bargaining agreements in effect on the due
10 date for the actuarial certification of en-
11 dangered status under subsection (a)(1)
12 and covering, as of such due date, at least
13 75 percent of the active participants in
14 such multiemployer plan.

15 “(D) SPECIAL RULES FOR CERTAIN SERI-
16 OUSLY UNDERFUNDED PLANS.—

17 “(i) In the case of an endangered plan
18 described in paragraph (2)(B) for which
19 the funded percentage for the plan year for
20 which the initial certification is made
21 under subsection (a)(1) is 70 percent or
22 less, paragraph (3) (B)(i)(II) shall be ap-
23 plied by substituting ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and para-
24 graph (3)(C) shall be applied by sub-

1 stituting ‘the 15-year period’ for ‘the 10-
2 year period’.

3 “(ii) In the case of an endangered
4 plan described in paragraph (2)(B) for
5 which the funded percentage for the plan
6 year for which the initial certification is
7 made under subsection (a)(1) is more than
8 70 percent but less than 80 percent, and—

9 “(I) the plan actuary certifies
10 within 30 days after the certification
11 under subsection (a)(1) that, based on
12 the terms of the plan and the collec-
13 tive bargaining agreements in effect
14 at the time of such certification, the
15 plan is not projected to be able to at-
16 tain the increase described in sub-
17 paragraph (B)(i) over the period de-
18 scribed in subparagraph (C), and

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

1 “(iii) For any plan year following the
2 year described in clause (ii)(II), subpara-
3 graph (B)(i)(II) and subparagraph (C)
4 shall apply, except that for each plan year
5 ending after such date for which the plan
6 actuary certifies (at the time of the annual
7 certification under subsection (a)(1) for
8 such plan year) that, based on the terms
9 of the plan and collective bargaining agree-
10 ments in effect at the time of that annual
11 certification, the plan is not projected to be
12 able to attain the increase described in
13 subparagraph (B)(i) over the period de-
14 scribed in subparagraph (C), subparagraph
15 (C) shall be applied by substituting ‘the
16 15-year period’ for ‘the 10-year period’.

17 “(E) REPORTING.—A summary of any
18 funding improvement plan or modification
19 thereto adopted during any plan year, together
20 with annual updates regarding the funding
21 ratio of the plan, shall be included in the an-
22 nual report for such plan year under section
23 104(a) and in the summary annual report for
24 such plan year under section 104(b)(3).

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

3 “(A) ACTIONS BY PLAN SPONSOR PENDING
4 COMMENCEMENT OF FUNDING IMPROVEMENT
5 PERIOD.—In the case of an endangered plan
6 described in paragraph (2)(B), pending the
7 commencement of the funding improvement pe-
8 riod, the plan sponsor shall take all reasonable
9 actions consistent with the terms of the plan
10 and applicable law and expected, based on rea-
11 sonable assumptions, to achieve—

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

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

17 Such actions include applications for extensions
18 of amortization periods under section 302A(d),
19 use of the shortfall funding method in making
20 funding standard account computations,
21 amendments to the plan’s benefit structure, re-
22 ductions in future benefit accruals, and other
23 reasonable actions consistent with the terms of
24 the plan and applicable law.

1 “(B) INFORMATION PROVIDED TO BAR-
2 GAINING PARTIES BY PLAN SPONSOR.—

3 “(i) IN GENERAL.—Within 30 days
4 after the adoption of a funding improve-
5 ment plan, the plan sponsor of an endan-
6 gered plan described in paragraph (2)(B)
7 shall provide to the bargaining parties a
8 schedule showing revised benefit struc-
9 tures, contribution structures, or both,
10 which, if adopted, may reasonably be ex-
11 pected to enable the multiemployer plan to
12 meet the applicable benchmarks described
13 in paragraph (3) in accordance with the
14 funding improvement plan. The schedule
15 shall describe the reductions in future ben-
16 efit accruals and increases in contributions
17 (if any) that the plan sponsor determines
18 are reasonably necessary to achieve the
19 benchmarks, assuming there are no in-
20 creases in contributions under the plan
21 other than the increases necessary to
22 achieve the benchmarks after future ben-
23 efit accruals have been reduced to the max-
24 imum extent permitted by law.

1 “(ii) ALTERNATIVES AT PLAN SPON-
2 SOR’S DISCRETION.—The plan sponsor
3 may, as it deems appropriate, prepare and
4 provide the bargaining parties with addi-
5 tional information relating to contribution
6 rates or benefit reductions, alternative
7 schedules, or other information relevant to
8 achieving the benchmarks under the fund-
9 ing improvement plan.

10 “(5) MAINTENANCE OF CONTRIBUTIONS PEND-
11 ING ADOPTION OF FUNDING IMPROVEMENT PLAN.—
12 Pending adoption of a funding improvement plan by
13 the plan sponsor, the plan sponsor may not accept
14 a collective bargaining agreement or participation
15 agreement with respect to the multiemployer plan
16 that provides for—

17 “(A) a reduction in the level of contribu-
18 tions for any participants,

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

21 “(C) any new direct or indirect exclusion
22 of younger or newly hired employees from plan
23 participation.

24 “(6) NO BENEFIT INCREASES PENDING ADOP-
25 TION OF FUNDING IMPROVEMENT PLAN.—Pending

1 adoption of a funding improvement plan with respect
2 to an endangered multiemployer plan—

3 “(A) IN GENERAL.—No amendment of the
4 plan which increases the liabilities of the plan
5 by reason of any increase in benefits, any
6 change in the accrual of benefits, or any change
7 in the rate at which benefits become nonforfeit-
8 able under the plan may be adopted.

9 “(B) EXCEPTION.—Subparagraph (A)
10 shall not apply to any plan amendment which
11 is required as a condition of qualification under
12 part I of subchapter D of chapter 19 of subtitle
13 A of the Internal Revenue Code of 1986 or to
14 comply with other applicable law.

15 “(7) PENALTY IF NO FUNDING IMPROVEMENT
16 PLAN ADOPTED.—A failure of the plan sponsor to
17 adopt a funding improvement plan by the date speci-
18 fied in subsection (b)(1) shall be treated for pur-
19 poses of section 502(c)(2) as a failure or refusal by
20 the plan administrator to file the annual report re-
21 quired to be filed with the Secretary under section
22 101(b)(4).

23 “(8) COMPLIANCE WITH FUNDING IMPROVE-
24 MENT PLAN.—Upon adoption of a funding improve-

1 ment plan with respect to an endangered multiem-
2 ployer plan—

3 “(A) a plan described in paragraph (2)(B)
4 may not be amended—

5 “(i) so as to be inconsistent with the
6 funding improvement plan, or

7 “(ii) so as to increase benefits, includ-
8 ing future benefit accruals, unless the plan
9 actuary certifies that, after taking into ac-
10 count the benefit increase, the plan is still
11 reasonably expected to meet the applicable
12 benchmarks under paragraph (3) in ac-
13 cordance with the schedule contemplated in
14 the funding improvement plan, and

15 “(B) a plan to which paragraph (2)(B)
16 does not apply may not be amended—

17 “(i) so as to be inconsistent with the
18 funding improvement plan, or

19 “(ii) so as to increase benefits, includ-
20 ing future benefit accruals, unless the ac-
21 tuary certifies that such increase is paid
22 for out of contributions not required by the
23 funding improvement plan to meet the ap-
24 plicable benchmarks under paragraph (3).

1 “(9) UPDATES TO FUNDING IMPROVEMENT
2 PLAN AND SCHEDULES.—

3 “(A) FUNDING IMPROVEMENT PLAN.—The
4 funding improvement plan may be periodically
5 updated by the plan sponsor. A copy of any up-
6 dated funding improvement plan shall be filed
7 with the plan’s annual report under section 104
8 of the Employee Retirement Income Security
9 Act of 1974.

10 “(B) SCHEDULES.—The plan sponsor may
11 periodically update any schedule of contribution
12 rates provided under this subsection to reflect
13 the experience of the plan.

14 “(C) DURATION OF SCHEDULE.—A sched-
15 ule of contribution rates provided by the plan
16 sponsor and relied upon by bargaining parties
17 in negotiating a collective bargaining agreement
18 shall remain in effect for the duration of that
19 collective bargaining agreement.

20 “(D) DURATION OF FUNDING IMPROVE-
21 MENT PLAN.—A funding improvement plan
22 adopted under this subsection shall remain in
23 effect with respect to a multiemployer plan,
24 with modifications if applicable, until a plan
25 year in which the multiemployer plan is no

1 longer in endangered status as certified by the
2 actuary under subsection (a).

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

5 “(1) IN GENERAL.—In any case in which a
6 multiemployer plan is in critical status for a plan
7 year as described in paragraph (2) and no rehabili-
8 tation plan under this subsection with respect to
9 such multiemployer plan is in effect for the plan
10 year, the plan sponsor shall, in accordance with this
11 subsection, adopt a rehabilitation plan. The rehabili-
12 tation plan shall be adopted not later than 240 days
13 following the required date for the actuarial certifi-
14 cation of critical status under subsection (a)(1).

15 “(2) CRITICAL STATUS.—

16 “(A) ENTRY.—A multiemployer plan is in
17 critical status for a plan year if, as determined
18 by the plan actuary under subsection (a), the
19 plan is described in paragraph (3) .

20 “(B) EMERGENCE.—A plan that has been
21 determined and certified as being in critical sta-
22 tus shall remain in such status until a plan
23 year for which the plan actuary certifies, in ac-
24 cordance with subsection (a)(2), that the plan is
25 not projected to have an accumulated funding

1 deficiency for the plan year or any of the 9 suc-
2 ceeding plan years, without regard to use of the
3 shortfall method or any extension of amortiza-
4 tion periods under section 302A(d).

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

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

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

14 “(ii) the sum of—

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

17 “(II) the present value of the
18 reasonably anticipated employer con-
19 tributions for the current plan year
20 and each of the 6 succeeding plan
21 years, assuming that the terms of the
22 1 or more collective bargaining agree-
23 ments pursuant to which the plan is
24 maintained for the current plan year
25 continue in effect for succeeding plan

1 years, is less than the present value of
2 all benefits projected to be payable
3 under the plan during the current
4 plan year and each of the 6 suc-
5 ceeding plan years (plus administra-
6 tive expenses for such plan years).

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

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

12 “(ii) the present value of the reason-
13 ably anticipated employer contributions for
14 the current plan year and each of the 4
15 succeeding plan years, assuming that the
16 terms of the 1 or more collective bar-
17 gaining agreements pursuant to which the
18 plan is maintained for the current plan
19 year remain in effect for succeeding plan
20 years,

21 is less than the present value of all benefits pro-
22 jected to be payable under the plan during the
23 current plan year and each of the 4 succeeding
24 plan years (plus administrative expenses for
25 such plan years).

1 “(C) A plan is described in this subpara-
2 graph if—

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

6 “(ii) the plan has an accumulated
7 funding deficiency for the current plan
8 year or is projected to have an accumu-
9 lated funding deficiency for any of the 4
10 succeeding plan years, not taking into ac-
11 count any extension of amortization peri-
12 ods under section 302A(d).

13 “(D) A plan is described in this subpara-
14 graph if—

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

22 “(II) the present value, as of the be-
23 ginning of the current plan year, of the
24 reasonably anticipated employer contribu-
25 tions for the current plan year,

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

8 “(iii) the plan is projected to have an
9 accumulated funding deficiency for the
10 current plan year or any of the 4 suc-
11 ceeding plan years, not taking into account
12 any extension of amortization periods
13 under section 302A(d).

14 “(E) A plan is described in this subpara-
15 graph if—

16 “(i) the funded percentage of the plan
17 is greater than 65 percent for the current
18 plan year, and

19 “(ii) the plan is projected to have an
20 accumulated funding deficiency for the
21 current plan year or for any of the suc-
22 ceeding 3 plan years, not taking into ac-
23 count any extension of amortization peri-
24 ods under section 302A(d).

25 “(4) REHABILITATION PLAN.—

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

3 “(i) actions such as reductions in plan
4 expenditures (including plan mergers and
5 consolidations), future benefit accruals or
6 other benefits, or increases in contributions
7 if agreed to by the bargaining parties, or
8 any combination of such actions that are
9 reasonably expected to enable, under rea-
10 sonable actuarial assumptions, the plan to
11 cease to be in critical status by the end of
12 the rehabilitation period, or

13 “(ii) reasonable measures to emerge
14 from critical status at a later point or to
15 forestall possible insolvency (within the
16 meaning of section 4245), if the plan spon-
17 sor determines that, based on reasonable
18 actuarial assumptions and upon exhaustion
19 of all reasonable measures, the plan can
20 not reasonably be expected to cease to be
21 in critical status by the end of the rehabili-
22 tation period. In such a case, the rehabili-
23 tation plan shall set forth the alternatives
24 considered, explain why the plan is not
25 reasonably expected to emerge from critical

1 status within the stated time period, and
2 specify when, if ever, the plan is expected
3 to emerge from critical status in accord-
4 ance with the rehabilitation plan.

5 “(B) REHABILITATION PERIOD.—The re-
6 habilitation period for a plan in critical status
7 is the 10-year period beginning on the first day
8 of the first plan year of the multiemployer plan
9 following the earlier of—

10 “(i) the second anniversary of the
11 date of the adoption of the rehabilitation
12 plan, or

13 “(ii) the expiration of the collective
14 bargaining agreements in effect on the
15 date of the due date for the actuarial cer-
16 tification of critical status under subsection
17 (a)(1) and covering, as of such date, at
18 least 75 percent of the active participants
19 in such multiemployer plan.

20 “(C) REPORTING.—A summary of any re-
21 habilitation plan or modification thereto adopt-
22 ed during any plan year, together with annual
23 updates regarding the funding ratio of the plan,
24 shall be included in the annual report for such
25 plan year under section 104(a) and in the sum-

1 mary annual report under section 104(b)(3) for
2 that plan year.

3 “(5) SCHEDULES OF CONTRIBUTIONS, BENE-
4 FITS AFFECTED.—

5 “(A) PRESENTATION BY PLAN SPONSOR.—

6 “(i) IN GENERAL.—Within 30 days
7 after the adoption of a rehabilitation plan,
8 the plan sponsor of a plan in critical status
9 shall provide to the bargaining parties a
10 schedule showing revised benefit struc-
11 tures, contribution structures, or both,
12 which, if adopted, may reasonably be ex-
13 pected to enable the multiemployer plan to
14 emerge from critical status in accordance
15 with its rehabilitation plan. The schedule
16 shall describe the reductions in future ben-
17 efit accruals, and increases in contributions
18 (if any) that the plan sponsor determines
19 are reasonably necessary to emerge from
20 critical status, assuming there are no in-
21 creases in contributions under the plan
22 other than the increases necessary to
23 emerge from critical status after future
24 benefit accruals have been reduced to the
25 maximum extent permitted by law.

1 “(ii) ALTERNATIVES AT PLAN SPON-
2 SOR’S DISCRETION.—The plan sponsor
3 may, as it deems appropriate, prepare and
4 provide the bargaining parties with addi-
5 tional information relating to contribution
6 rates or benefit reductions, alternative
7 schedules or other information relevant to
8 emerging from critical status under the re-
9 habilitation plan.

10 “(iii) LIMITATION ON REDUCTION IN
11 RATES OF FUTURE ACCRUALS.—The
12 schedule described in subparagraph (A)(i)
13 of this paragraph shall not reduce the rate
14 of future accruals below—

15 “(I) a monthly benefit equal to 1
16 percent of the contributions required
17 to be made with respect to a partici-
18 pant or the equivalent standard ac-
19 crual rate for a participant or group
20 of participants under the collective
21 bargaining agreements in effect as of
22 the first day of the plan year in which
23 the plan enters critical status with
24 such monthly benefit payable as a sin-
25 gle life annuity commencing at the

1 participant's normal retirement date,
2 or

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

5 The equivalent standard accrual rate shall
6 be determined by the plan sponsor based
7 on the standard or average contribution
8 base units that they determine to be rep-
9 resentative for active participants and such
10 other factors as they determine to be rel-
11 evant.

12 “(B) UPDATES TO REHABILITATION PLAN
13 AND SCHEDULES.—

14 “(i) REHABILITATION PLAN.—The re-
15 habilitation plan shall be annually updated
16 by the plan sponsor and filed with the
17 plan's annual report under section 104 of
18 the Employee Retirement Income Security
19 Act of 1974.

20 “(ii) SCHEDULES.—The plan sponsor
21 may periodically update any schedule of
22 contribution rates provided under this sub-
23 section to reflect the experience of the
24 plan, except that the schedule or schedules

1 under subparagraph (A) shall be updated
2 at least once every 3 years.

3 “(iii) DURATION OF SCHEDULE.—A
4 schedule of contribution rates provided by
5 the plan sponsor and relied upon by bar-
6 gaining parties in negotiating a collective
7 bargaining agreement shall remain in ef-
8 fect for the duration of that collective bar-
9 gaining agreement.

10 “(C) DEFAULT SCHEDULE.—

11 “(i) IN GENERAL.—If the collective
12 bargaining agreement providing for con-
13 tributions under a multiemployer plan that
14 was in effect at the time the plan entered
15 critical status has expired and, after re-
16 ceiving a schedule from the plan sponsor
17 under subparagraph (A), the bargaining
18 parties have not adopted bargaining-agree-
19 ment terms consistent such a schedule, the
20 schedule described in subparagraph (A)(i)
21 shall go into effect with respect to those
22 bargaining parties.

23 “(ii) DEEMED WITHDRAWAL.—Upon
24 the failure of an employer that has an obli-
25 gation to contribute under the plan to

1 make contributions in compliance with a
2 schedule that goes into effect under this
3 subparagraph, that failure may, at the dis-
4 cretion of the plan sponsor, be treated as
5 a withdrawal by the employer from the
6 plan under section 4203 or a partial with-
7 drawal by the employer under section
8 4205.

9 “(6) TEMPORARY RESTRICTIONS ON CONTRIBU-
10 TION RATES.—Pending adoption of a rehabilitation
11 plan by the plan sponsor, the plan sponsor may not
12 accept a collective bargaining agreement or partici-
13 pation agreement with respect to the multiemployer
14 plan that provides for—

15 “(A) a reduction in the level of contribu-
16 tions for any participants,

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

19 “(C) any new direct or indirect exclusion
20 of younger or newly hired employees from plan
21 participation.

22 “(7) RESTRICTIONS ON BENEFIT INCREASES.—

23 “(A) PENDING ADOPTION OF REHABILITA-
24 TION PLAN.—Pending adoption of a rehabilita-

1 tion plan with respect to a multiemployer plan
2 in critical status—

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

10 “(ii) EXCEPTION.—Clause (i) shall
11 not apply to any plan amendment which is
12 required as a condition of qualification
13 under part I of subchapter D of chapter
14 19 of subtitle A of the Internal Revenue
15 Code of 1986 or to comply with other ap-
16 plicable law.

17 “(B) AFTER ADOPTION OF A REHABILITA-
18 TION PLAN.—After adoption of a rehabilitation
19 plan with respect to a multiemployer plan in
20 critical status, the multiemployer plan may not
21 be amended—

22 “(i) so as to be inconsistent with the
23 rehabilitation plan, or

24 “(ii) so as to increase benefits, includ-
25 ing future benefit accruals, unless the plan

1 actuary certifies that such increase is paid
2 for out of additional contributions not con-
3 templated by the rehabilitation plan, and,
4 after taking into account the benefit in-
5 crease, the multiemployer plan still is rea-
6 sonably expected to emerge from critical
7 status by the end of the rehabilitation pe-
8 riod on the schedule contemplated in the
9 rehabilitation plan.

10 “(d) EXPEDITED RESOLUTION OF PLAN SPONSOR
11 DECISIONS.—If, within 60 days of the due date for adop-
12 tion of a funding improvement plan under subsection (b)
13 or a rehabilitation plan under subsection (c), the plan
14 sponsor of a plan in endangered status or a plan in critical
15 status has not agreed on a funding improvement plan or
16 rehabilitation plan, then any member of the board or
17 group that constitutes the plan sponsor may require that
18 the plan sponsor enter into an expedited dispute resolution
19 procedure for the development and adoption of a funding
20 improvement plan or rehabilitation plan.

21 “(e) NONPARTICIPATION.—

22 “(1) BOTH BARGAINED AND NON-BARGAINED
23 EMPLOYEE-PARTICIPANTS.—In the case of an em-
24 ployer that contributes to a multiemployer plan with
25 regard both to employees who are covered by 1 or

1 more collective bargaining agreements and to em-
2 ployees who are not covered by such an agreement,
3 if the plan is in endangered status or in critical sta-
4 tus, benefits of and contributions for the non-bar-
5 gained employees shall be determined as if those
6 non-bargained employees were covered under the
7 first to expire of the employer's collective bargaining
8 agreements in effect when the plan went into endan-
9 gered or critical status.

10 “(2) NON-BARGAINED EMPLOYEES ONLY.—In
11 the case of an employer that contributes to a multi-
12 employer plan only with respect to employees who
13 are not covered by a collective bargaining agreement,
14 subsections (b) and (c) shall be applied as if the em-
15 ployer were the bargaining parties, and its participa-
16 tion agreement with the plan was a collective bar-
17 gaining agreement with a term ending on the first
18 day of the plan year beginning after the employer is
19 provided the schedule or schedules described in sub-
20 sections (b) and (c).

21 “(3) EMPLOYEES COVERED BY A COLLECTIVE
22 BARGAINING AGREEMENT.—Whether an employee is
23 considered to be covered by a collective bargaining
24 agreement for purposes of this section shall be deter-

1 mined without regard to the special rule in Treas.
2 Reg. section 1.410(b)-6(d)(ii)(D).

3 “(f) DEFINITIONS; ACTUARIAL METHOD.—For pur-
4 poses of this section—

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

8 “(A) an employer that has an obligation to
9 contribute under the plan, and

10 “(B) an employee organization which, for
11 purposes of collective bargaining, represents
12 plan participants employed by such an em-
13 ployer.

14 “(2) FUNDED PERCENTAGE.—The term ‘fund-
15 ed percentage’ means the percentage expressed as a
16 ratio—

17 “(A) the numerator of which is the value
18 of the plan’s assets, as determined under sec-
19 tion 302A(c)(2), and

20 “(B) the denominator of which is the ac-
21 crued liability of the plan, determined using ac-
22 tuarial assumptions described in section
23 302A(c)(3).

1 “(3) ACCUMULATED FUNDING DEFICIENCY.—
2 The term ‘accumulated funding deficiency’ has the
3 meaning provided such term in section 302A(a).

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

8 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
9 tive participant’ means, in connection with a multi-
10 employer plan, a participant, or the beneficiary or
11 alternate payee of a participant, who—

12 “(A) is not in covered service under the
13 plan, and

14 “(B) is in pay status under the plan or has
15 a nonforfeitable right to benefits under the
16 plan.

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

19 “(A) at any time during the current plan
20 year, such person is a participant or beneficiary
21 under the plan and is paid an early, late, nor-
22 mal, or disability retirement benefit under the
23 plan (or a death benefit under the plan related
24 to a retirement benefit), or

1 “(B) to the extent provided in regulations
2 of the Secretary of the Treasury, such person
3 is entitled to such a benefit under the plan.

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

7 “(8) ACTUARIAL METHOD.—Notwithstanding
8 any other provision of this section, the actuary’s de-
9 terminations with respect to a plan’s normal cost,
10 actuarial accrued liability and improvements in a
11 plan’s funded percentage under this section shall be
12 based upon the unit credit funding method (whether
13 or not that method is used for the plan’s actuarial
14 valuation).”.

15 (b) CAUSE OF ACTION TO COMPEL ADOPTION OF
16 FUNDING IMPROVEMENT OR REHABILITATION PLAN.—
17 Section 502(a) of the Employee Retirement Income Secu-
18 rity Act of 1974 shall be amended by (1) striking “or”
19 at the end of paragraph (8) thereof, (2) striking
20 “amounts.” at the end of paragraph (9) and substituting
21 therefor “amounts; or” and adding, after paragraph (9),
22 the following:

23 “(9) In the case of a multiemployer plan that
24 has been certified by the actuary to be in endan-
25 gered or critical status under section 302B, if the

1 plan sponsor has not adopted a funding improve-
2 ment or rehabilitation plan under subsection (b) or
3 (c) of such section by the deadline established in
4 that section for the adoption of such a funding im-
5 provement plan or rehabilitation plan, by an em-
6 ployer that has an obligation to contribute with re-
7 spect to the multiemployer plan or an employee or-
8 ganization that represents active participants in the
9 multiemployer plan, for an order compelling the plan
10 sponsor to adopt a funding improvement or rehabili-
11 tation plan.”.

12 (c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971
13 of the Internal Revenue Code of 1986 is amended by re-
14 designating subsection (g) as subsection (h), and inserting
15 after subsection (f) the following:

16 “(g) MULTIEMPLOYER PLANS IN CRITICAL STA-
17 TUS.—Any tax under this section shall not apply with re-
18 spect to a multiemployer plan in critical status pursuant
19 to 302B of the Employee Retirement Income Security Act
20 of 1974, provided that the plan adopts a rehabilitation
21 plan in accordance with such section and complies with
22 such rehabilitation plan (as amended from time to time).”.

23 (d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

1 (1) Section 302(c)(11) of Employee Retirement
2 Income Security Act of 1974 is amended by adding
3 at the end thereof the following new subparagraph:

4 “(C) MULTIEMPLOYER PLANS IN CRITICAL
5 STATUS.—Subparagraph (A) shall not apply in
6 the case of a multiemployer plan for any plan
7 year in which the plan is in critical status pur-
8 suant to section 302B, provided that the plan
9 adopts a rehabilitation plan in accordance with
10 section 302B(c) and complies with such reha-
11 bilitation plan (as amended from time to
12 time).”.

13 (2) Section 412(c)(11) of the Internal Revenue
14 Code of 1986 is amended by adding at the end the
15 following new subparagraph:

16 “(C) MULTIEMPLOYER PLANS IN CRITICAL
17 STATUS.—Subparagraph (A) shall not apply in
18 the case of a multiemployer plan for any plan
19 year in which the plan is in critical status pur-
20 suant to 302B of the Employee Retirement In-
21 come Security Act of 1974, provided that the
22 plan adopts a rehabilitation plan in accordance
23 with such section and complies with such reha-
24 bilitation plan (as amended from time to
25 time).”.

1 (e) CONFORMING AMENDMENT.—The table of con-
2 tents in section 1 of such Act (as amended by section 101
3 of this Act) is amended further by inserting after the item
4 relating to section 302A the following new item:

“Sec. 302B. Additional funding rules for multiemployer plans in endangered
status or critical status.”.

5 (f) EFFECTIVE DATE.—The amendment made by
6 this section shall apply with respect to plan years begin-
7 ning after 2006.

8 **SEC. 103. MEASURE TO FORESTALL INSOLVENCY OF MULTI-**
9 **EMPLOYER PLANS.**

10 Section 4245(d)(1) of the Employee Retirement In-
11 come Security Act of 1974 (29 U.S.C. 1426(d)(1)) is
12 amended—

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

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

1 **SEC. 104. WITHDRAWAL LIABILITY REFORMS.**

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

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

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

11 (3) EFFECTIVE DATE.—The amendments made
12 by this section shall apply with respect to sales oc-
13 ccurring on or after January 1, 2007.

14 (b) REPEAL OF LIMITATION TO 20 ANNUAL PAY-
15 MENTS.—

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

19 (2) EFFECTIVE DATE.—The amendment made
20 by this section shall apply with respect to with-
21 drawals occurring on or after January 1, 2007.

22 (c) WITHDRAWAL LIABILITY CONTINUES IF WORK
23 CONTRACTED OUT.—

24 (1) IN GENERAL.—Clause (i) of section
25 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b

1 (2)(A) is amended by inserting “or to another party
2 or parties” after “to another location”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by this subsection shall apply with respect to work
5 transferred on or after the date of the enactment of
6 this Act.

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

9 (1) IN GENERAL.—Subsection (d) of section
10 4203 of such Act (29 U.S.C. 1383(4)) is repealed.

11 (2) EFFECTIVE DATE.—The repeal under this
12 subsection shall apply with respect to cessations to
13 have obligations to contribute to multiemployer
14 plans and cessations of covered operations under
15 such plans occurring on or after January 1, 2007.

16 (e) APPLICATION OF RULES TO PLANS PRIMARILY
17 COVERING EMPLOYEES IN THE BUILDING AND CON-
18 STRUCTION.—

19 (1) IN GENERAL.—Section 4210(b) of such Act
20 (29 U.S.C. 1390(b)) is amended—

21 (A) by striking paragraph (1), and

22 (B) by redesignating paragraphs (2)
23 through (4) as paragraphs (1) through (3), re-
24 spectively.

1 (2) RESTART RULE.—Section 4211(c) of such
2 Act is amended—

3 (A) by striking “, other than a plan which
4 primarily covers employees in the building and
5 construction industry,” and

6 (B) by striking the second sentence there-
7 of.

8 (3) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply with respect to plan
10 withdrawals occurring on or after January 1, 2007.

11 **SEC. 105. SPECIAL RULE FOR CERTAIN BENEFIT RESTORA-**
12 **TIONS.**

13 In the case of a multiemployer plan for which the
14 plan document, the trust agreement, or formal written
15 communication from the plan sponsor to the participants
16 provided before June 30, 2005, for the restoration of bene-
17 fits reduced due to benefit reductions adopted on or after
18 January 1, 2002, and before June 30, 2005, any benefit
19 restorations pursuant to such document, agreement, or
20 communication shall not be subject to the amendments
21 made by this Title to sections 302A(b)(2)(B)(iii),
22 302B(b)(6), 302B(b)(8)(A)(ii), 302B(b)(8)(B)(ii),
23 302B(c)(7)(A), and 302B(c)(7)(B)(ii) of the Employee In-
24 come Security Act of 1974.

1 **TITLE II—DISCLOSURE**

2 **SEC. 201. MULTIEMPLOYER DEFINED BENEFIT PLAN FUND-** 3 **ING NOTICES.**

4 (a) INCLUSION OF STATEMENT OF THE RATIO OF IN-
5 ACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Sec-
6 tion 101(f)(2)(B) of the Employee Retirement Income Se-
7 curity Act of 1974 (29 U.S.C. 1021(f)(2)(B)) is amend-
8 ed—

9 (1) in clause (iii), by striking “and” at the end;

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

12 (3) by adding at the end the following:

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

16 “(I) the number of participants
17 who were not in covered service under
18 the plan during the plan year; to

19 “(II) the number of participants
20 who were in covered service under the
21 plan during the plan year.”.

22 (b) COMPARISON OF VALUE OF PLAN ASSETS TO AN-
23 NUAL LIABILITY FOR BENEFITS.—Section 101(f)(2)(B)
24 of such Act (29 U.S.C. 7 1021(f)(2)(B)) (as amended by
25 the preceding provisions of this section) is amended—

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

3 “(ii) a statement of a reasonable esti-
4 mate of—

5 “(I) the value of the plan’s assets
6 as of the last day of the plan year to
7 which the notice relates;

8 “(II) the liability of the plan for
9 benefit payments and administrative
10 expenses for the plan year to which
11 the notice relates; and

12 “(III) the ratio of the amount de-
13 termined under subclause (I) to the
14 amount determined under subclause
15 (II);” and

16 (2) by adding at the end of clause (v) the fol-
17 lowing: “A plan’s estimated assets and estimated li-
18 ability for benefit payments and expenses for a plan
19 year under clause (ii) shall be determined based on
20 the most reliable information reasonably available to
21 the plan sponsor by the date that is 30 days before
22 the due date for the notice.”.

23 (c) STATEMENT OF PLAN’S FUNDING POLICY AND
24 METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B)
25 of such Act, as amended by this Act, is amended—

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

2 (2) in clause (v), by striking the period and in-
3 sserting “; and”; and

4 (3) by inserting after clause (v) the following
5 new clause:

6 “(vi) a statement setting forth the
7 funding policy of the plan and the asset al-
8 location of investments under the plan (ex-
9 pressed as percentages of total assets) as
10 of the end of the plan year to which the
11 notice relates.”.

12 (d) NOTICE OF FUNDING IMPROVEMENT PLAN OR
13 REHABILITATION PLAN.—Section 101(f)(2)(B) of such
14 Act, as amended by this Act, is amended—

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

16 (2) in clause (vi), by striking the period and in-
17 sserting “; and”; and

18 (3) by inserting after clause (vi) the following:

19 “(vii) a summary of any funding im-
20 provement plan, rehabilitation plan, or
21 modification thereof adopted under section
22 302B during the plan year to which the
23 notice relates.”.

24 (e) NOTICE DUE 90 DAYS AFTER END OF PLAN
25 YEAR.—

1 (1) IN GENERAL.—Section 101(f)(3) of such
2 Act (29 U.S.C. 1021(f)(3)) is amended by striking
3 “two months after the deadline (including exten-
4 sions) for filing the annual report for the plan year”
5 and inserting “90 days after the end of the plan
6 year”.

7 (2) MODEL NOTICE.—Not later than 270 days
8 after the date of the enactment of this Act, the Sec-
9 retary of Labor shall publish a model version of the
10 notice required by section 101(f) of the Employee
11 Retirement Income Security Act of 1974.

12 (f) ADDITIONAL ANNUAL REPORTING REQUIRE-
13 MENTS.—Section 103 of the Employee Retirement Income
14 Security Act of 1974 (29 U.S.C. 1023) is amended—

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

18 (2) by adding at the end the following sub-
19 section:

20 “(f) With respect to any multiemployer defined ben-
21 efit plan, an annual report under this section for a plan
22 year shall include the following:

23 “(1) The ratio, as of the end of such plan year,
24 of—

1 “(A) the number of participants who were
2 not in covered service under the plan during the
3 plan year, to

4 “(B) the number of participants who were
5 in covered service under the plan during the
6 plan year.

7 “(2) In any case in which any liabilities to par-
8 ticipants or their beneficiaries under such plan as of
9 the end of such plan year consist (in whole or in
10 part) of liabilities to such participants and bene-
11 ficiaries under 2 or more pension plans as of imme-
12 diately before such plan year—

13 “(A) the funded percentage of each of such
14 2 or more pension plans as of the last day of
15 the plan year immediately before such plan
16 year; and

17 “(B) the funded percentage of the plan
18 with respect to which the annual report is filed
19 as of the last day of such plan year.

20 “(3) For purposes of paragraph (2), the term
21 ‘funded percentage’ means, the funded percentage of
22 the plan as defined in section 302B(f)(2).”.

23 (g) ADDITIONAL INFORMATION IN ANNUAL ACTU-
24 ARIAL STATEMENT OF MULTIEMPLOYER PLAN REGARD-

1 ING PLAN RETIREMENT PROJECTIONS.—Section 103(d)
 2 of such Act (29 U.S.C. section 1023(d)) is amended—

3 (1) by redesignating paragraphs (12) and (13)
 4 as paragraphs (13) and (14), respectively; and

5 (2) by inserting after paragraph (11) the fol-
 6 lowing paragraph:

7 “(12) In the case of a multiemployer plan, a
 8 statement explaining the actuarial assumptions and
 9 methods used in projecting future retirements and
 10 forms of benefit distributions under the plan.”.

11 (h) MULTIEMPLOYER PLANS’ FILING AFTER 275
 12 DAYS AFTER PLAN YEAR ONLY IN CASES OF HARD-
 13 SHIP.—Section 104(a)(1) of such Act (29 U.S.C.
 14 1024(a)(1)) is amended by inserting after the first sen-
 15 tence the following new sentence: “The Secretary shall
 16 prescribe regulations to permit extensions in cases of
 17 hardship, on a case-by-case basis, of the deadline for filing
 18 the annual report past 275 days after the close of the plan
 19 year for multiemployer pension plans.”.

20 (i) INTERNET DISPLAY OF INFORMATION.—Section
 21 104(b) of such Act (29 U.S.C. 1024(b)) is amended by
 22 adding at the end the following:

23 “(5) INTERNET DISPLAY OF INFORMATION.—

24 “(A) IN GENERAL.—Identification and
 25 basic plan information and actuarial informa-

1 tion included in the annual report of a multiem-
2 ployer plan for any plan year shall be filed with
3 the Secretary in an electronic format which ac-
4 commodates display on the Internet, in accord-
5 ance with regulations prescribed by the Sec-
6 retary.

7 “(B) DISPLAY BY SECRETARY.—The Sec-
8 retary shall develop an Internet site which dis-
9 plays such information described under sub-
10 paragraph (A) within 90 days after the date of
11 the filing of the annual report. The Secretary
12 shall provide for the display of such information
13 through other appropriate media.

14 “(C) DISPLAY BY PLAN SPONSOR.—The
15 Secretary shall promulgate regulations requir-
16 ing the plan sponsor to display the information
17 described under subparagraph (A) on any Inter-
18 net site maintained by such plan sponsor.”.

19 (j) SUMMARY ANNUAL REPORT OF A MULTIEM-
20 PLOYER PLAN POSTED WITHIN 15 DAYS AFTER DEAD-
21 LINE FOR FILING OF ANNUAL REPORT.—Section
22 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended
23 by—

24 (1) striking “(3) Within” and inserting “(3)(A)
25 Within”;

1 (2) inserting after “fiscal year of the plan” the
2 following: “(in the case of a multiemployer plan,
3 within 15 business days after the due date under
4 subsection (a)(1) for the filing of the annual report
5 for the fiscal year of the plan),”; and

6 (3) adding at the end the following:

7 “(B) In the case of a multiemployer plan, post-
8 ing the text of the summary annual report on the
9 plan sponsor’s Internet site by the deadline in sub-
10 paragraph (A) shall be treated as furnishing such
11 report by that deadline, if such report is furnished
12 as soon as practicable thereafter and in no event
13 later than 15 business days after the date described
14 for such plans in subparagraph (A).”.

15 (k) DISCLOSURE OF PLAN ASSETS AND LIABILITIES
16 IN SUMMARY ANNUAL REPORT OF A MULTIEMPLOYER
17 PLAN.—Section 104(b)(3)(B) of such Act (as amended by
18 subsection (j)) is amended further by adding at the end
19 the following:

20 “(C) In the case of a multiemployer plan, the
21 material provided pursuant to subparagraph (A) to
22 summarize the latest annual report shall—

23 “(i) be written in a manner calculated to
24 be understood by the average plan participant;
25 and

1 “(ii) shall set forth the total assets and li-
 2 abilities of the plan for the plan year for which
 3 the latest annual report was filed and for each
 4 of the 2 preceding plan years, as reported in
 5 the annual report for such plan year under this
 6 section.”.

7 (l) INFORMATION MADE AVAILABLE TO PARTICI-
 8 PANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT
 9 TO MULTIEMPLOYER PLANS.—

10 (1) IN GENERAL.—Section 101 of the Employee
 11 Retirement Income Security Act of 1974 (29 U.S.C.
 12 1021) is amended—

13 (A) by redesignating subsection (j) as sub-
 14 section (k); and

15 (B) by inserting after subsection (i) the
 16 following:

17 “(j) MULTIEMPLOYER PLAN INFORMATION MADE
 18 AVAILABLE ON REQUEST.—

19 “(1) IN GENERAL.—Each administrator of a
 20 multiemployer plan shall furnish to any plan partici-
 21 pant or beneficiary or any employer having an obli-
 22 gation to contribute to the plan, upon written re-
 23 quest—

24 “(A) a copy of the actuarial valuation for
 25 any plan year and the projections and analyses

1 on which the actuary's certification under sec-
2 tion 302B(a) was based, once such projections
3 and analyses have been in the plan's possession
4 for at least 30 business days; and

5 “(B)(i) a copy of any quarterly, semi-an-
6 nual or annual financial report prepared for the
7 plan by any plan investment manager or advi-
8 sor or other plan fiduciary, which summarizes
9 the plan's investment portfolio and experience
10 and which has been in the plan's possession for
11 at least 30 business days; or

12 “(ii) if determined appropriate by the plan
13 sponsor, a quarterly summary of the informa-
14 tion contained in such reports.

15 “(2) COMPLIANCE.—Information required to be
16 provided under paragraph (1)—

17 “(A) shall be provided to the requesting
18 participant, beneficiary, or employer within 30
19 days after the request in a form and manner
20 prescribed in regulations of the Secretary;

21 “(B) may be provided in written, elec-
22 tronic, or other appropriate form to the extent
23 such form is reasonably accessible to persons to
24 whom the information is required to be pro-
25 vided; and

1 “(C) shall not include individually identifi-
2 able information regarding any plan partici-
3 pant, beneficiary, employee, fiduciary or con-
4 tributing employer or reveal any proprietary
5 business information regarding the plan, any
6 contributing employer or any entity providing
7 services to the plan.

8 “(3) LIMITATIONS.—In no case shall a partici-
9 pant, beneficiary, or employer be entitled under this
10 subsection to receive more than copy of any report
11 described in paragraph (1) during any one 12-month
12 period. The administrator may make a reasonable
13 charge to cover copying, mailing, and other costs of
14 furnishing copies of such report. The Secretary may
15 by regulation prescribe the maximum amount which
16 constitutes a reasonable charge under the preceding
17 sentence.”.

18 (2) ENFORCEMENT.—Section 502(c)(4) of such
19 Act (29 U.S.C. 1132(c)(4)) (as amended by section
20 103(b)(2)(B)) is further amended by striking “sec-
21 tion 302(b)(7)(F)(iv)” and inserting “subsection (j)
22 of section 101, and 302(b)(7)(F)(iv)”.

23 (3) REGULATIONS.—The Secretary shall pre-
24 scribe regulations under section 101(j)(2) of the
25 Employee Retirement Income Security Act of 1974

1 (added by paragraph (1)) not later than 270 days
2 after the date of the enactment of this Act.

3 (m) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY
4 TO MULTIEMPLOYER PLANS.—

5 (1) IN GENERAL.—Section 101 of such Act (as
6 amended by this section) is amended—

7 (A) by redesignating subsection (k) as sub-
8 section (l); and

9 (B) by inserting after subsection (j) the
10 following new subsection:

11 “(k) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-
12 ITY.—

13 “(1) IN GENERAL.—The plan sponsor or ad-
14 ministrator of a multiemployer plan shall furnish to
15 any employer who has an obligation to contribute
16 under the plan and who so requests in writing notice
17 of—

18 “(A) the estimated amount which would be
19 the amount of such employer’s withdrawal li-
20 ability under part 1 of subtitle E of title IV if
21 such employer withdrew on the last day of the
22 plan year preceding the date of the request; and

23 “(B) an explanation of how such estimated
24 liability amount was determined, including the
25 actuarial assumptions and methods used to de-

1 terminate the value of plan liabilities and assets
2 and the data regarding employer contributions,
3 unfunded vested benefits, annual changes in the
4 plan’s unfunded vested benefits and the applica-
5 tion of any relevant limitations on the estimated
6 withdrawal liability.

7 “(2) COMPLIANCE.—Any notice required to be
8 provided under paragraph (1)—

9 “(A) shall be provided to the requesting
10 employer within 180 days after the request in
11 a form and manner prescribed in regulations by
12 the Secretary (or, subject to such regulations,
13 such longer time as may be necessary in the
14 case of a plan that determines withdrawal liabil-
15 ity based on the attributable method under sec-
16 tion 4211(c)(4) or a modified attributable
17 method approved by the Pension Benefit Guar-
18 anty Corporation under section 4211(c)(5));
19 and

20 “(B) may be provided in written, elec-
21 tronic, or other appropriate form to the extent
22 such form is reasonably accessible to employers
23 to whom the information is required to be pro-
24 vided.

1 “(3) LIMITATIONS.—In no case shall an em-
2 ployer be entitled under this subsection to receive
3 more than one notice described in paragraph (1)
4 during any one 12-month period. The person re-
5 quired to provide such notice may make a reasonable
6 charge to cover copying, mailing, and other costs of
7 furnishing such notice. The Secretary may by regu-
8 lation prescribe the maximum amount which con-
9 stitutes a reasonable charge under the preceding
10 sentence.”.

11 (2) ENFORCEMENT.—Section 502(c)(4) of such
12 Act (29 U.S.C. 1132(c)(4)) (as amended by para-
13 graph (1)) is further amended by striking “sub-
14 sections (j)” and inserting “subsections (j) and (k)”.

15 (n) MODEL FORM.—Not later than 270 days after
16 the date of the enactment of this Act, the Secretary of
17 Labor shall publish a model form for providing the state-
18 ments, schedules, and other material required to be pro-
19 vided under section 104(b)(3) of the Employee Retirement
20 Income Security Act of 1974, as amended by this section.

21 (o) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to plan years beginning after De-
23 cember 31, 2006.

1 **TITLE III—DEDUCTION**
 2 **LIMITATIONS**

3 **SEC. 301. INCREASE IN DEDUCTION LIMITS.**

4 (a) INCREASE IN DEDUCTION LIMIT FOR MULTIEM-
 5 PLOYER PLANS.—Section 404(a)(1)(D) of the Internal
 6 Revenue Code of 1986 is amended to read as follows:

7 “(D) AMOUNT DETERMINED ON BASIS OF
 8 UNFUNDED CURRENT LIABILITY.—

9 “(i) IN GENERAL.—In the case of a
 10 defined benefit plan which is a multiem-
 11 ployer plan, except as provided in regula-
 12 tions, the maximum amount deductible
 13 under the limitations of this paragraph
 14 shall not be less than the unfunded current
 15 liability of the plan.

16 “(ii) UNFUNDED CURRENT LIABIL-
 17 ITY.—For purposes of clause (i), the term
 18 ‘unfunded current liability’ means the ex-
 19 cess (if any) of—

20 “(I) 140 percent of the current
 21 liability of the plan determined under
 22 section 302B(c)(6)(C) of the Em-
 23 ployee Retirement Income Security
 24 Act of 1974, over

1 “(II) the value of the plan’s as-
2 sets determined under section
3 302B(c)(2) of such Act.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to contributions for taxable years
6 beginning after 2006.

7 **SEC. 302. UPDATING DEDUCTION RULES FOR COMBINA-**
8 **TION OF PLANS.**

9 (a) IN GENERAL.—Subparagraph (C) of section
10 404(a)(7) of the Internal Revenue Code of 1986 (relating
11 to limitation on deductions where combination of defined
12 contribution plan and defined benefit plan) is amended by
13 adding after clause (ii) the following new clauses:

14 “(iii) LIMITATIONS.—In the case of
15 employer contributions to 1 or more de-
16 fined contribution plans, this paragraph
17 shall only apply to the extent that such
18 contributions exceed 6 percent of the com-
19 pensation otherwise paid or accrued during
20 the taxable year to the beneficiaries under
21 such plans. For purposes of this clause,
22 amounts carried over from preceding tax-
23 able years under subparagraph (B) shall
24 be treated as employer contributions to 1
25 or more defined contribution plans to the

1 extent attributable to employer contribu-
2 tions to such plans in such preceding tax-
3 able years.

4 “(iv) **MULTIEMPLOYER PLANS.**—Con-
5 tributions to a multiemployer pension plan
6 shall not be taken into account in applying
7 the requirements of subparagraph (A).”.

8 (b) **CONFORMING AMENDMENT.**—Subparagraph (A)
9 of section 4972(c)(6) of such Code (relating to nondeduct-
10 ible contributions) is amended to read as follows:

11 “(A) so much of the contributions to 1 or
12 more defined contribution plans which are not
13 deductible when contributed solely because of
14 section 404(a)(7) as does not exceed the
15 amount of contributions described in section
16 401(m)(4)(A), or”.

17 (c) **EFFECTIVE DATE.**—The amendments made by
18 this section shall apply to contributions for taxable years
19 beginning after December 31, 2006.

○