AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 276

109TH CONGRESS
1ST SESSION

S. 1953

[Report No. 109–174]

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2005

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

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A BILL

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

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

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

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

5 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

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

Sec. 101. Defined contribution plans required to provide employees with freedom to invest their plan assets.
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Sec. 103. Periodic pension benefit statements.
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Sec. 105. Allowance of, and credit for, additional IRA payments in certain bankruptcy cases.

TITLE II—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

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Sec. 203. Independent investment advice provided to plan participants.
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Sec. 205. Administrative provisions.

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Sec. 303. Limitation on benefit improvements by single-employer plans which are underfunded or maintained by financially weak or bankrupt employers.
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Sec. 305. Technical and conforming amendments.

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

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

PART III—INTEREST RATE ASSUMPTIONS AND DEDUCTIBLE AMOUNTS FOR 2006

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Sec. 334. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
Sec. 335. Modification of pension funding requirements for plans subject to current transition rule.

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

Subtitle D—Studies

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

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

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Sec. 402. Notice of funding benefit limitations and restrictions on benefit increases.
Sec. 403. Notice of bankruptcy filing.

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

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Sec. 605. PBGC premiums for small and new plans.

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

SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO PROVIDE EMPLOYEES WITH FREEDOM TO INVEST THEIR PLAN ASSETS.

(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) 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 plan meets the diversification requirements of subparagraphs (B), (C), and (D).

"(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of an applicable individual's ac-

count attributable to employee contributions and elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this subparagraph 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 subparagraph (D).

"(C) 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 subparagraph if each applicable individual who—

"(i) is a participant who has completed 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 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 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 percent of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses) in the plan sponsor,

"(II) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

"(III) does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses),

"(IV) 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

"(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term 'partner' includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation.

"(F) 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

"(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 ownership 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 separately 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 employer 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-participant 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

''(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) of the Internal Revenue Code of 1986, 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) of such Code.

"(6) OTHER DEFINITIONS.—For purposes of 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 contribu-

tion 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 service 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 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.

(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

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

(i) December 31, 2006, or

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

(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which 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. 102. NOTICE OF FREEDOM TO DIVEST EMPLOYER SECURITIES OR REAL PROPERTY.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

"SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBUTION PLANS TO PROVIDE NOTICE OF FREEDOM TO DIVEST EMPLOYER SECURITIES.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of a defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be $100 for each day in the noncompliance period with respect to the failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED AND REASONABLE DILIGENCE EXERCISED.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

"(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

"(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

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

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

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

"(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

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

"(2) In the case of a multiemployer plan, the plan.

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

tribution, the plan 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 applicable individual.

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

(2) AGGREGATION.—Section 414(t) of such Code is amended by striking "or 4980B" and inserting "4980B, or 4980H".

(3) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

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

(b) AMENDMENTS OF ERISA.—

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

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

"(j) 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 applicable individual."

(2) 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(j)" and inserting "subsection (i) or (j) 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 satisfying the requirements of the amendments made by this section.

(d) EFFECTIVE DATES.—

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

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

SEC. 103. PERIODIC PENSION BENEFIT STATEMENTS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

"SEC. 4980I. FAILURE OF CERTAIN PENSION PLANS TO PROVIDE REQUIRED INFORMATION.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of an applicable pension plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be $100 for each day in the noncompliance period with respect to the failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the statement to which the failure relates is provided or the failure is otherwise corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED AND REASONABLE DILIGENCE EXERCISED.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for tax under subsection (d) did not know that the failure existed and

exercised reasonable diligence to meet the requirements of subsection (e).

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

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

"(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sen-

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

"(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

"(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

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

"(2) In the case of a multiemployer plan, the plan.

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

"(e) REQUIREMENTS TO PROVIDE PENSION BENEFIT STATEMENTS.—

"(1) REQUIREMENTS.—

"(A) DEFINED CONTRIBUTION PLAN.—The administrator of an applicable pension plan which is a defined contribution plan shall furnish a pension benefit statement described in paragraph (2)—

"(i) at least once each calendar quarter to a participant or beneficiary who has the right to direct the investment of assets in his or her account under the plan,

"(ii) at least once each calendar year to a participant or beneficiary who has his or her own account under the plan but who does not have the right to direct the investment of assets in that account, and

"(iii) upon written request to a plan beneficiary who is not a participant or beneficiary described in clause (i) or (ii), except that this clause shall apply to only 1 request during any 12-month period.

"(B) DEFINED BENEFIT PLAN.—The administrator of an applicable pension plan which is a defined benefit plan shall furnish a pension benefit statement described in paragraph (2)—

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

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

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary of Labor, in consultation with the Pension Benefit Guaranty Corporation.

"(2) STATEMENTS.—

"(A) IN GENERAL.—A pension benefit statement furnished 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) 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 a defined contribution 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 of Labor, 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)) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).

"(4) SPECIAL RULE FOR CERTAIN ANNUITIES.—In the case of an annuity contract or custo-

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

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

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

''(2) EXCEPTION FOR GOVERNMENT AND CHURCH PLANS.—This section shall not apply to any governmental or church plan. For purposes of this paragraph, the terms 'governmental plan' and 'church plan' have the meanings given such terms by section 414.''

(2) AGGREGATION.—Section 414(t) of such Code, as amended by this Act, is amended by striking ''or 4980H'' and inserting ''4980H, or 4980I''.

(3) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code, as amended by

this Act, is amended by adding at the end the following new item:

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

(b) AMENDMENTS OF ERISA.—

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

"(a) REQUIREMENTS TO PROVIDE PENSION BENEFIT STATEMENTS.—

"(1) REQUIREMENTS.—

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

"(i) at least once each calendar quarter to a participant or beneficiary who has the right to direct the investment of assets in his or her account under the plan,

"(ii) at least once each calendar year to a participant or beneficiary who has his or her own account under the plan but does not have the right to direct the investment of assets in that account, and

"(iii) upon written request to a plan beneficiary not described in clause (i) or (ii).

"(B) DEFINED BENEFIT PLAN.—The administrator of a defined benefit plan (other than a one-participant retirement plan described in section 101(i)(8)(B)) shall furnish a pension benefit statement—

"(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit and who is employed by the employer maintaining the plan at the time 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 deter-

mining 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)''.

(c) 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 4980I of the

Internal Revenue Code of 1986 and 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 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 terminates (determined without regard to any

extension thereof after such date of enactment), or

(B) December 31, 2008.

SEC. 104. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF BLACKOUT PERIODS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) EXCISE TAX.—

(A) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 4980J. FAILURE OF CERTAIN DEFINED CONTRIBUTION PLANS TO PROVIDE NOTICE OF BLACKOUT PERIODS.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any defined contribution plan to which this section applies to meet the requirements of subsection (e) with respect to any participant or beneficiary.

''(b) AMOUNT OF TAX.—

''(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be $100 for each day in the noncompliance period with respect to the failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED AND REASONABLE DILIGENCE EXERCISED.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

"(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

"(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

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

under principles similar to the principles of section 1561.

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

"(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

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

"(2) In the case of a multiemployer plan, the plan.

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

"(e) NOTICE OF BLACKOUT PERIODS TO PARTICIPANT OR BENEFICIARY UNDER DEFINED CONTRIBUTION PLAN.—

"(1) IN GENERAL.—

"(A) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any blackout period with respect to a defined contribution plan, the plan administrator shall notify

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

"(B) SPECIAL RULE FOR CERTAIN ANNUITIES.—In the case of an annuity contract or custodial account described in section 403(b) which is not a plan established or maintained by the employer, the notice shall be furnished by the issuer of the contract, the custodian of the account, or such other person as is specified by the Secretary.

"(2) NOTICE REQUIREMENTS.—

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

"(i) the reasons for the blackout period,

"(ii) an identification of the investments and other rights affected,

"(iii) the expected beginning date and length of the blackout period,

"(iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appro-

priateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and

"(v) such other matters as the Secretary of Labor may require by regulation.

"(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

"(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

"(i) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1) of the Employee Retirement Income Security Act of 1974, and a fiduciary of the plan reasonably so determines in writing, or

"(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan ad-

ministrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

"(D) WRITTEN NOTICE.—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.

"(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO BLACKOUT PERIOD.—In the case of any blackout period in connection with a defined contribution plan, the plan administrator shall provide timely notice of such blackout period to the issuer of any employer securities subject to such blackout period.

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

participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

"(4) CHANGES IN LENGTH OF BLACKOUT PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

"(5) REGULATORY EXCEPTIONS.—The Secretary of Labor may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary of Labor determines are in the interests of participants and beneficiaries.

"(6) GUIDANCE AND MODEL NOTICES.—The Secretary of Labor shall issue guidance and model notices which meet the requirements of this subsection.

"(7) BLACKOUT PERIOD.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'blackout period' means, in connection with a defined contribution plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under terms of the plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

"(B) EXCLUSIONS.—The term 'blackout period' does not include a suspension, limitation, or restriction—

"(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

"(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

"(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 414(p)(8)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 414(p)(1)(A)).

"(8) DEFINED CONTRIBUTION PLAN TO WHICH SECTION APPLIES.—

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

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

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

"(C) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—This section shall not apply to governmental and church plans. For purposes of this subparagraph, the terms 'governmental plan' and 'church plan' have the meanings given such terms by section 414."

(B) AGGREGATION.—Section 414(t) of such Code, as amended by this Act, is amended by striking "or 4980I" and inserting "4980I, or 4980J".

(C) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

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

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

(b) 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 clause (i) 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 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,",

(B) by striking "employer" and "employer's" in paragraph (8)(B)(iii) and inserting "individual" and "individual's", respectively,

(C) by striking "leases employees" in paragraph (8)(B)(v) and inserting "uses the services of leased employees (within the meaning of section 414(n) of the Internal Revenue Code of 1986)", and

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

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

(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. 105. 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 employee's contributions to such arrangement with stock of such employer.

"(iii) EMPLOYER DESCRIBED.—An employer is described in this clause if, in any taxable year preceding the taxable year described in clause (ii)—

"(I) such employer (or any controlling corporation of such employer) was a debtor in a case under title 11

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

"(II) such employer (or any other person) was subject to an indictment or conviction resulting from business transactions related to such case.

"(iv) QUALIFIED PARTICIPANT.—For purposes of clause (ii), the term 'qualified participant' means any applicable individual who was a participant in the cash or deferred arrangement described in clause (i) on the date that is 6 months before the filing of the case described in clause (iii).

"(v) TERMINATION.—This subparagraph shall not apply to taxable years beginning 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 allowable 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.

TITLE II—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

SEC. 201. DEFINED CONTRIBUTION PLANS REQUIRED TO PROVIDE ADEQUATE INVESTMENT EDUCATION TO PARTICIPANTS.

(a) EXCISE TAX ON FAILURE OF CERTAIN DEFINED CONTRIBUTION PLANS TO PROVIDE ADEQUATE INVESTMENT INFORMATION.—

(1) IN GENERAL.—Section 4980I(e)(1)(A) of the Internal Revenue Code of 1986, as added by section 103, is amended by adding at the end the following new flush sentence:

''In addition to the pension benefit statement, the administrator 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 as provided in paragraph (5).''

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

''(5) BASIC INVESTMENT GUIDELINES.—

''(A) IN GENERAL.—The Secretary of Labor shall, in consultation with the Secretary, develop and make available to defined contribution plans for distribution under paragraph (1)(A) a model form containing basic guidelines for investing for retirement. Except as otherwise provided by the Secretary of Labor, 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 of Labor,

"(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 of Labor 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 of Labor 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) RULES RELATING TO FORM AND STATEMENT.—The model form under subparagraph (A)—

"(i) shall be written in a manner calculated to be understood by the average plan participant, and

"(ii) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries."

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

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

"(C) SEPARATE APPLICATION.—This paragraph shall be applied separately to failures to

meet the requirements of subsection (e)(1)(A) to provide pension benefit statements and failures to meet the requirements of subsection (e)(1)(A) to provide model forms containing basic investment guidelines.'';

(B) by inserting ''or model form'' after ''statement'' in subsection (d)(3); and

(C) by inserting ''or model form containing basic investment guidelines'' after ''statement'' in subsection (e)(4).

(b) ADEQUATE INVESTMENT EDUCATION.—

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

''(d) BASIC INVESTMENT GUIDELINES.—

''(1) IN GENERAL.—The administrator of an individual account plan (other than a one-participant retirement plan described in section 101(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 section 102, is amended by striking "section 101" and inserting "section 101 or section 104(d)".

(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 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. 202. MATERIAL INFORMATION RELATING TO INVESTMENT IN EMPLOYER SECURITIES.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 4980H(e) of the Internal Revenue Code of 1986, as added by section 102, is amended—

(A) by striking ''(e) NOTICE OF RIGHT TO DIVEST.—Not'' and inserting:

''(e) NOTICE REQUIREMENTS.—

''(1) NOTICE OF RIGHT TO DIVEST.—Not'',

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) and adjusting all margins accordingly, and

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

''(2) MATERIAL INFORMATION.—

''(A) IN GENERAL.—The administrator of a defined contribution plan (other than a one-participant retirement plan) shall provide to each participant and beneficiary who has the right to direct the investment of assets in his or her account in employer securities with all reports, proxy statements, and other communications regarding investment of such assets in employer securities to the extent that such reports, statements, and communications are required to be provided by the plan sponsor to investors in connection with such an investment under applicable securities laws. Such reports, statements, and communications may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries.

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

maintained by the plan sponsor, the plan sponsor shall transmit such information to the plan administrator.''

(2) CONFORMING AMENDMENTS.—

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

''(C) SEPARATE APPLICATION.—This paragraph shall be applied separately for failures to meet the requirements of subsection (e)(1) and failures to meet the requirements of subsection (e)(2).''

(B)(i) The heading for section 4980H of such Code, as so added, is amended by striking ''**NOTICE OF FREEDOM TO DIVEST EMPLOYER SECURITIES**'' and inserting ''**INFORMATION REGARDING INVESTMENT IN EMPLOYER SECURITIES**''.

(ii) The item relating to section 4980H in the table of sections for chapter 43 of such Code, as so added, is amended by striking ''notice of freedom to divest employer securities'' and inserting ''information regarding investment in employer securities''.

(b) AMENDMENTS OF ERISA.—

(1) 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 (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) PROVIDING OF MATERIAL INFORMATION.—

''(1) IN GENERAL.—The administrator of an individual account plan (other than a one-participant retirement plan described in section 101(i)(8)(B)) shall provide to each participant and beneficiary who has the right to direct the investment of assets in his or her account in employer securities with all reports, proxy statements, and other communications regarding investment of such assets in employer securities to the extent that such reports, statements, and communications are required to be provided by the plan sponsor to investors in connection with such an investment under applicable securities laws. Such reports, statements, and communications may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries.

''(2) PLAN SPONSOR.—If any information required to be provided under paragraph (1) is main-

tained by the plan sponsor, the plan sponsor shall transmit such information to the plan administrator.''

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

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

(B) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

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

''(8) The Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to comply with the requirements of section 101(k) until such failure or refusal is corrected.''

(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. 203. 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 quali-

fied 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 ad-

vice 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 invest-

ment 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. 204. 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. 205. ADMINISTRATIVE PROVISIONS.

(a) AUTHORITY OF THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall have the authority to prescribe rules applicable to the statements required under section 4980H(e)(1) of the Internal Revenue Code of 1986 (as added and amended by this Act) and section 101(j) of the Employee Retirement Income Security Act of 1974 (as added by this Act).

(b) AUTHORITY OF THE SECRETARY OF LABOR.—The Secretary of Labor shall have the authority to prescribe rules applicable to the statements required under—

(1) section 4980H(e)(2) of the Internal Revenue Code of 1986 (as added by this Act) and section 101(k) of this Employee Retirement Income Security Act of 1974 (as added by this Act);

(2) section 4980I of such Code (as added by this Act) and section 105(a) of such Act (as added by this Act); and

(3) section 4980J of such Code (as added by this Act) and section 101(i) such Act (as amended by this Act).

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

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

PART I—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 301. MODIFICATIONS OF THE MINIMUM FUNDING STANDARDS.

(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 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 con-

1 tributions to or under such plan are made by
2 employers of participants in such plan.
3 No plan described in subparagraph (C), (D), or (F)
4 shall be treated as a qualified plan for purposes of
5 section 401(a) unless such plan meets the require-
6 ments of section 401(a)(7) as in effect on September
7 1, 1974.
8 ''(3) CERTAIN TERMINATED MULTIEMPLOYER
9 PLANS.—This section applies with respect to a ter-
10 minated multiemployer plan to which section 4021
11 of the Employee Retirement Income Security Act of
12 1974 applies until the last day of the plan year in
13 which the plan terminates (within the meaning of
14 section 4041A(a)(2) of such Act).
15 ''(c) LIABILITY FOR CONTRIBUTIONS.—
16 ''(1) IN GENERAL.—Except as provided in para-
17 graph (2), the amount of any contribution required
18 by this section and any required installments under
19 section 430(j) shall be paid by any employer respon-
20 sible for making the contribution to or under the
21 plan.
22 ''(2) JOINT AND SEVERAL LIABILITY WHERE
23 EMPLOYER MEMBER OF CONTROLLED GROUP.—If
24 the employer referred to in paragraph (1) is a mem-
25 ber of a controlled group, each member of such

group shall be jointly and severally liable for payment of such contribution or required installment.

"(d) VARIANCE FROM MINIMUM FUNDING STANDARD.—

"(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 subparagraphs (B) and (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for

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

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

"(i) 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(d), and

"(ii) 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), except that the interest rate used for purposes of computing the amortization charge described in such section shall be the rate determined under section 6621(b).

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

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

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

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

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

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

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

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, 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 under this subsection and not satisfied by employer contributions.

"(4) 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.

"(5) 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—

"(A) with respect to such employer, and

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

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

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

"(e) EXTENSION OF AMORTIZATION PERIODS.—In the case of a multiemployer plan, the period of years required to amortize any unfunded liability (described in any clause of section 431(b)(2)(B)) of the plan may be extended by the Secretary for a period of time (not in excess of 10 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if the Secretary determines that the failure to permit such extension would—

"(1) result in—

"(A) a substantial risk to the voluntary continuation of the plan, or

"(B) a substantial curtailment of pension benefit levels or employee compensation, and

"(2) be adverse to the interests of plan participants in the aggregate.

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

"(f) REQUIREMENTS RELATING TO WAIVERS AND EXTENSIONS.—

"(1) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—If—

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

"(B) a plan amendment described in subsection (g)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months for multiemployer plans),

no applicable benefit increase shall take effect. If an applicable benefit increase takes effect 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 increase takes effect.

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

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

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

"(C) is required as a condition of qualification under this part.

"(3) APPLICABLE BENEFIT INCREASE.—The term 'applicable benefit increase' has the meaning given such term by section 436(b)(3) without regard to subparagraph (B) or (C) thereof.

"(4) SECURITY FOR WAIVERS; 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 to provide security to such plan as a condition for granting or modifying a waiver under subsection (d).

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

"(I) the Pension Benefit Guaranty Corporation, or

"(II) at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974) or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

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

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

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

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

"(ii) consider—

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

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

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

"(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

"(I) the aggregate unpaid minimum required contributions (within the meaning of section 4971) for the plan year and all preceding plan years, and

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

is less than $1,000,000.

"(ii) TREATMENT OF PENDING WAIVERS.—For purposes of clause (i)(I), minimum required contributions shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under subsection (d) or section 302(c) of the Employee Retirement Income Security Act of 1974 which are pending with respect to such plan were denied.

"(5) ADDITIONAL REQUIREMENTS.—

"(A) ADVANCE NOTICE.—The Secretary shall, before granting a waiver under subsection (d) or an extension under subsection (e), require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver or extension to each affected party. Such notice shall include a description of

the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and for benefit liabilities (within the meaning of section 4041(d) of such Act).

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

"(g) OTHER DEFINITIONS AND RULES.—For purposes of this section—

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

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

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

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

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

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (d)(2)) and that a waiver under subsection (d)(1) 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. 302. FUNDING RULES APPLICABLE TO SINGLE-EMPLOYER PENSION PLANS.

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

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

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

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

"(a) MINIMUM REQUIRED CONTRIBUTION.—

"(1) IN GENERAL.—The minimum required contribution for a defined benefit plan to which section 412(a)(2)(A) applies for any plan year shall, for purposes of this section and section 412, be equal to the sum of—

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

"(B) the aggregate amortization payment (if any) for the plan year, and

"(C) the waiver amortization payment (if any) for the plan year.

In no event shall the sum of the amounts determined under subparagraphs (B) and (C) for any plan year exceed the unfunded target liability for the plan year.

"(2) LIMITATION ON ANNUAL INCREASES OR DECREASES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the minimum required contribution for any plan year beginning after 2007—

"(i) shall not exceed the minimum required contribution for the preceding plan year (determined after application of this paragraph and without regard to any adjustment under subsection (i)(2)), increased by the greater of—

"(I) 30 percent of the target normal cost of the plan for the preceding plan year, or

"(II) 2 percent of the target liability of the plan for the preceding plan year, and

"(ii) shall not be less than such minimum required contribution for the preceding plan year, reduced by the greater of the amounts under subclause (I) or (II) of clause (i).

"(B) SPECIAL RULES FOR BENEFIT INCREASES OR DECREASES DURING PLAN YEAR.—If an applicable benefit increase (as defined in section 436(b)(3) without regard to subpara-

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

"(i) the minimum required contribution for the current plan year for purposes of applying subparagraph (A) shall be determined without regard to any increase in such contribution attributable to the applicable benefit increase, and

"(ii) the amount determined under subparagraph (A) (after application of clause (i)) shall be increased by the amount of the increase in the minimum required contribution disregarded under clause (i).

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

"(C) SPECIAL RULES RELATING TO PRECEDING YEAR.—For purposes of subparagraph (A)—

"(i) all target liability amortization installments and waiver amortization installments under subsections (c) and (d) which were determined with respect to any amortizable target liability or waived funding

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

"(ii) if paragraph (3) applied for the preceding plan year, the minimum required contribution for the preceding plan year shall be treated as being equal to the target normal cost for such year.

"(3) SPECIAL RULES FOR PLANS WHERE ASSETS EXCEED TARGET LIABILITY.—If, as of the valuation date for any plan year, the value of the assets of the plan (reduced as provided in subsection (e)(3)) equals or exceeds the target liability for the plan year (in this subsection referred to as the 'current plan year')—

"(A) the minimum required contribution for the current plan year shall be equal to target normal cost, reduced (but not below zero) by the amount of any such excess, and

"(B) all target liability amortization installments and waiver amortization installments under subsections (c) and (d) which were determined with respect to any amortizable target li-

ability or waived funding deficiency for the current plan year or any preceding plan year shall not be taken into account for any succeeding plan year.

"(b) TARGET NORMAL COST.—For purposes of this section—

"(1) IN GENERAL.—The term 'target normal cost' means, with respect to any plan year, the present value of all benefits which accrue or are earned under the plan during the plan year. If any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase shall be treated as accruing during the current plan year.

"(2) FINANCIALLY-WEAK EMPLOYERS.—If a plan sponsor of a plan for any plan year is a financially-weak employer for any plan year, the target normal cost of the plan for the plan year shall be the at-risk target normal cost determined under subsection (f).

"(c) DEFINITIONS AND RULES RELATING TO TARGET LIABILITY .—For purposes of this section—

"(1) TARGET LIABILITY.—

"(A) IN GENERAL.—The term 'target liability' means, with respect to any plan year, the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

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

"(2) UNFUNDED TARGET LIABILITY.—The term 'unfunded target liability' means, with respect to any plan year, the excess (if any) of—

"(A) the target liability for the plan year, over

"(B) the value of the assets of the plan (reduced as provided under subsection (e)(3)) as of the valuation date.

"(3) AGGREGATE AMORTIZATION PAYMENTS.—For purposes of this section—

"(A) AGGREGATE AMORTIZATION PAYMENT.—The aggregate amortization payment for any plan year is the aggregate amount of the target liability amortization installments de-

termined for the plan year with respect to any amortizable target liability for the plan year and each of the 6 preceding plan years.

"(B) AMORTIZABLE TARGET LIABILITY.—

"(i) IN GENERAL.—The term 'amortizable target liability' means, with respect to any plan year, the amount (if any) by which the unfunded target liability for the current plan year is more or less than the amount determined under clause (ii).

"(ii) AMOUNTS PREVIOUSLY ACCOUNTED FOR.—The amount determined under this clause is the present value of all target liability amortization installments and waiver amortization installments under this subsection and subsection (d) which were determined for the current plan year or any succeeding plan year with respect to any amortizable target liability or waived funding deficiency for any plan year preceding the current plan year.

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

"(i) the liability shall be amortized in 7 level amortization amounts over the 7-plan year period beginning with the plan year, and

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

"(D) COMPUTATION ASSUMPTIONS.—In determining the present value of any amortization installment under subparagraph (B)(ii), or the amount of any amortization installment under subparagraph (C), the following rules shall apply:

"(i) Each amortization installment shall be treated as made on the valuation date for the plan year for which the installment is determined.

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

"(4) TRANSITION RULE FOR AMORTIZATION OF UNFUNDED TARGET LIABILITY.—

"(A) 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 target liability shall be taken into account under paragraph (2)(A) in determining unfunded target liability for the plan year.

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

"(i) IN GENERAL.—Except as provided in clause (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)(1)(B)(ii), 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.

"(d) AMORTIZATION OF WAIVED FUNDING DEFICIENCY.—For purposes of this section—

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

"(2) WAIVER AMORTIZATION INSTALLMENTS.—If a plan has a waived funding deficiency for any plan year—

"(A) the deficiency shall be amortized in 5 level amortization amounts over the 5-plan year period beginning with the succeeding plan year, and

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

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

"(A) Each amortization installment will be treated as made on the valuation date for the plan year for which the installment is determined.

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

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

"(e) 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 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 412(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 applicable effective interest rate (as defined in subsection (g)(3)) 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 net gain or loss with respect to plan assets for the preceding plan year. Notwithstanding subsection (g)(2)(B), such rate of net gain or loss 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) REDUCTION IN VALUE OF ASSETS.—Solely for purposes of applying subsections (a)(3) and (c)(2) in determining the minimum required contribution under this section, the value of the plan assets otherwise determined under subsection (g)(2) shall be reduced by the amount of the prefunding balance under this subsection.

"(f) SPECIAL RULES FOR LARGE PLANS MAINTAINED BY FINANCIALLY-WEAK EMPLOYERS.—

"(1) DETERMINATION OF TARGET LIABILITY AND NORMAL COST.—

"(A) IN GENERAL.—If, as of the valuation date for any plan year, any plan sponsor of a plan to which this section applies is a financially-weak employer, then, in applying this section for the plan year, the at-risk target liability and at-risk target normal cost shall (if greater) be substituted for the target liability and target normal cost, respectively. Such substitution shall not be applied for any plan year for which the plan has no unfunded target liability (deter-

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

"(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)(1)(B)(ii) 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 a 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 described in section 1381(a) more than 50 percent of the ownership or capital and profits interests of which are held—

"(I) by producers of agricultural products, or

"(II) organizations described in section 1381(a) meeting the requirements of subclause (I).

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

"(2) AT-RISK AMOUNTS.—

"(A) IN GENERAL.—Except as provided in paragraph (3), the at-risk target liability and at-risk target normal cost shall be determined in the same manner as the target liability and target normal cost, except that the actuarial assumptions described in subparagraph (B) shall be used in computing such amounts.

"(B) 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 shall be assumed to retire at the earliest retirement age 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.

"(3) PLAN SPONSORS FINANCIALLY WEAK FOR LESS THAN 5 YEARS.—

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

"(i) the applicable percentage of the at-risk target liability or the at-risk target normal cost, whichever is applicable, determined under this subsection (without regard to this paragraph), and

"(ii) the product of the target liability or the target normal cost, whichever is applicable, determined without regard to this subsection, and a percentage equal to 100 percent minus the applicable percentage.

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

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

"(4) FINANCIALLY-WEAK EMPLOYER.—

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

"(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(g)(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. Such

regulations shall also provide for the application of paragraph (5) in the case of employers treated as financially weak under such regulations.

"(5) DETERMINATION OF CONSECUTIVE PERIODS WHERE EMPLOYER IS FINANCIALLY WEAK.—

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

"(i) this subsection shall not apply for the plan year, and

"(ii) in applying this subsection for any succeeding plan year, the plan year described in clause (i) and any preceding plan year shall not be taken into account in determining any consecutive period of plan years under paragraphs (3) and (4)(A).

"(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 paragraphs (3) and (4)(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 paragraphs (3) and (4)(A).

"(iii) IMPROVEMENT YEAR.—For purposes of this subparagraph, the term 'improvement year' means any plan year for which any rating described in clause (i) or (ii) of paragraph (4)(A) is higher than such rating for the preceding plan year.

"(6) YEARS BEFORE EFFECTIVE DATE.—For purposes of paragraphs (3) and (4), plan years beginning before 2007 shall not be taken into account.

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

"(1) TIME FOR MAKING DETERMINATIONS.—

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

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

"(B) VALUATION DATE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the valuation date is the first day of the plan year.

"(ii) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 100 or fewer participants, a plan may designate any day during the plan year as its valuation date for the plan year and succeeding plan years. For purposes of this clause, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group (as defined in section 412(g)(4))) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

"(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—

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

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

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

"(A) IN GENERAL.—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, and

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

ginning on the last day of the 4th 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).

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

"(i) 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 applicable effective

interest rate for the preceding plan year to which the contribution is properly allocable.

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

"(3) APPLICABLE EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'applicable effective interest rate' means, with respect to any plan year, the single rate of interest which, if used to determine the present value of benefits accrued or earned under the plan as of the beginning

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

"(h) ACTUARIAL ASSUMPTIONS AND METHODS.—For purposes of this section—

"(1) ACTUARIAL ASSUMPTIONS.—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 RATE ASSUMPTIONS USED.—

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

"(i) in the case of plan years beginning in 2007 or 2008, by using the phase-in yield curve method (as defined in subparagraph (C)), and

"(ii) in the case of plan years beginning after 2008, by using the yield curve method (as defined in subparagraph (B)).

"(B) YIELD CURVE METHOD.—For purposes of this paragraph—

"(i) IN GENERAL.—The yield curve method is a method under which present value or other amounts requiring interest rate assumptions are 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.

"(C) PHASE-IN YIELD CURVE METHOD.—

"(i) IN GENERAL.—Present value or any other amount requiring the use of interest rate assumptions 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 (B), and

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

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33 percent for plan years beginning in 2007 and 67 percent for plan years beginning in 2008.

"(3) MORTALITY TABLE USED.—

"(A) SECRETARIAL AUTHORITY.—The Secretary shall by regulation prescribe mortality tables to be used 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.

"(B) 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.

"(C) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this paragraph and shall, to the extent the Secretary determines necessary, update the tables to reflect the actual experience of pension plans and projected trends in such experience.

"(4) TREATMENT OF OPTIONAL FORMS OF BENEFITS.—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 payments will be made in an optional form of benefit provided under the plan (including lump sum payments), and

"(B) any differences between the present value of any such optional form of benefit and the present value of the future payments used in computing target normal costs and target liability under this section.

"(5) APPROVAL REQUIRED FOR CERTAIN CHANGES IN ASSUMPTIONS BY CERTAIN PLANS.—

"(A) IN GENERAL.—No actuarial assumption used to determine the target liability for a plan to which this paragraph applies may be changed without the approval of the Secretary. The preceding sentence shall not apply to changes required under paragraph (2) or (3) with respect to any assumption.

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

"(i) the plan is a defined benefit plan to which title IV of the Employee Retirement Income Security Act of 1974 applies;

"(ii) the aggregate unfunded target liabilities as of the close of the preceding plan year of—

"(I) such plan, and

"(II) all other plans to which such title IV applies maintained by persons which are liable for payment of contributions to such plan under section 412(c),

exceed $50,000,000; and

"(iii) the change in assumptions (determined after taking into account any changes as a result of the application of paragraphs (2) and (3)) results in a decrease in the unfunded target liability of the plan for the current plan year which—

"(I) exceeds $50,000,000, or

"(II) exceeds $5,000,000 and is 5 percent or more of the target liability of the plan before such change.

"(i) PAYMENT OF MINIMUM REQUIRED CONTRIBUTION.—

"(1) IN GENERAL.—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 minimum required contribution for a plan year which is made on a date other than the valuation date for such plan year

shall be properly adjusted for interest accruing for the period between the valuation date and the payment date, determined by using the applicable effective interest rate (as defined in subsection (g)(3)) for the plan year.

"(j) QUARTERLY CONTRIBUTIONS REQUIRED.—

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

"(A) IN GENERAL.—In the case of a plan to which this subsection applies, the employer maintaining the plan shall make the required installments under this subsection 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 subsection (i)(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 subsection (i)(2) plus 5 percentage points.

"(B) PLANS TO WHICH SUBSECTION APPLIES.—This subsection applies to any defined benefit plan to which this section applies other than a plan which—

"(i) is a plan described in subsection (g)(1)(B)(ii)), or

"(ii) had an unfunded target liability of $1,000,000 or less for the preceding plan year.

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) 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.

"(B) PERIOD OF UNDERPAYMENT.—The period for which interest is charged under this subsection with regard 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.

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

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

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

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

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

"(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

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

"(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term 'required annual payment' means the lesser of—

"(i) 90 percent of the minimum required contribution under subsection (a) required to be contributed to or under the plan by the employer for the plan year, or

"(ii) 100 percent of the minimum required contribution so required for the pre-

ceding plan year (without regard to any waiver under section 412(d)).

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months. In the case of any plan year beginning in 2007, the amount under clause (ii) for the preceding plan year shall be determined by reference to the amount required to be contributed to or under the plan under section 412 (as such section was in effect before the date of the enactment of this part).

"(5) LIQUIDITY REQUIREMENT.—

"(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment 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 defined benefit plan—

"(i) to which this subsection applies for a plan year, and

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

"(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1), 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.—In no event shall the increase in the amount of any required installment under subparagraph (A) exceed the sum of the unfunded target liability and target normal cost for the plan year.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(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 the base amount with respect to such quarter over 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 funded target liability percentage (as defined in section 436(e)) 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.

"(6) FISCAL YEARS AND SHORT YEARS.—

"(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date

other than January 1, there shall be substituted for the months specified in this subsection the months which correspond thereto.

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

"(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 required installment under subsection (j) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other 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 for any plan year for which the funded target liability percentage (within the meaning of section 436(e)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest) 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 installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required installment or other 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 (as defined in section 412(g)(4)) of the contributing sponsor).

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

"(l) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the provisions of this section, including regulations—

"(1) for the proper treatment of increases in liabilities of any plan pursuant to plan amendments which are adopted, or which take effect, on a date during the plan year other than the valuation date,

"(2) for the application of any small plan exception under this section in cases of mergers and acquisitions, and

"(3) for the application of this section in the case of a plan maintained by more than one employer.

"SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.

"(a) IN GENERAL.—In the case of a multiemployer plan to which section 412(a)(2)(C) applies, the accumu-

1 lated funding deficiency of the plan for any plan year for
2 purposes of section 412 shall be—
3 "(1) except as provided in paragraph (2), the
4 amount, determined as of the end of the plan year,
5 equal to the excess (if any) of the total charges to
6 the funding standard account of the plan for all plan
7 years (beginning with the first plan year to which
8 section 412 applies to the plan) over the total credits
9 to such account for such years, or
10 "(2) if the multiemployer plan is in reorganiza-
11 tion for any plan year, the accumulated funding de-
12 ficiency of the plan determined under section 418B.
13 "(b) FUNDING STANDARD ACCOUNT.—
14 "(1) ACCOUNT REQUIRED.—Each multiem-
15 ployer plan to which this section applies shall estab-
16 lish and maintain a funding standard account. Such
17 account shall be credited and charged solely as pro-
18 vided in this section.
19 "(2) CHARGES TO ACCOUNT.—For a plan year,
20 the funding standard account shall be charged with
21 the sum of—
22 "(A) the normal cost of the plan for the
23 plan year,

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

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

"(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years,

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

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

"(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 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 this section), and

"(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of this section).

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

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

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

"(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 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 30 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 this section), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

"(4) 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.

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

"(6) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

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

plan years, beginning with the plan year in which the amount arose;

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

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

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

"(i) was adopted before such date, and

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

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

"(7) SPECIAL RULES.—For purposes of this section—

"(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

"(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in

the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

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

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

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

"(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of 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 this section) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss was deferred in the same manner as required under such section (and paragraph (2)(B)(iv) shall not apply to the amount so charged) .

"(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and

section 412 in such manner as determined by the Secretary.

"(c) SPECIAL RULES.—

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

"(2) VALUATION OF ASSETS.—

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

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

Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

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

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

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

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

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

"(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under

regulations prescribed for purposes of section 401(a)(5),

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

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

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

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

"(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 di-

rectly 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).

For purposes of subparagraph (A), unless otherwise provided by the plan, the accrued liability under a 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)).

"(B) MINIMUM AMOUNT.—

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

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

"(II) the value of the plan's assets determined under paragraph (2).

"(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

"(C) CURRENT LIABILITY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

"(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the

rate of interest determined under subparagraph (D).

"(iv) MORTALITY TABLES.—

"(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

"(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience.

In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

"(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

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

"(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in

plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

"(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent the Secretary determines necessary, update the tables to reflect the actual experience of pension plans and projected trends in such experience.

"(D) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

"(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(5) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

"(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

"(7) ANNUAL VALUATION.—

"(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

"(B) VALUATION DATE.—

"(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

"(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

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

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

(b) CONFORMING AMENDMENT.—The table of parts for subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

''Part III. Rules relating to minimum funding standards and benefit limitations.''.

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

SEC. 303. LIMITATION ON BENEFIT IMPROVEMENTS BY SINGLE-EMPLOYER PLANS WHICH ARE UNDERFUNDED OR MAINTAINED BY FINANCIALLY WEAK OR BANKRUPT EMPLOYERS.

(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. Limitations on benefit improvements by single-employer plans which are underfunded or maintained by financially weak or bankrupt employers.

"SEC. 436. LIMITATIONS ON BENEFIT IMPROVEMENTS BY SINGLE-EMPLOYER PLANS WHICH ARE UNDERFUNDED OR MAINTAINED BY FINANCIALLY WEAK EMPLOYERS.

"(a) BENEFIT LIMITATION REQUIREMENTS.—For purposes of section 401(a)(29), except as provided in subsection (f)(5), 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 BENEFIT INCREASES.—

"(1) IN GENERAL.—A plan meets the requirements of this subsection for any plan year if the plan provides that if the plan's adjusted funded target liability percentage for the preceding plan year is less than 80 percent, any applicable benefit increase shall not take effect during the plan year until the plan has met the additional funding requirements of paragraph (2).

"(2) ADDITIONAL FUNDING REQUIREMENTS.—

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to any applicable benefit increase for any plan year if the plan sponsor, in addition to any other contribution required under section 430, contributes to or under the plan an 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 the adjusted funded target liability percentage of the plan for the plan year being equal to 80 percent.

"(B) BENEFIT INCREASES COUNTED FOR PURPOSES OF FUNDED PERCENTAGE.—For purposes of subparagraph (A), the adjusted funded target liability percentage shall be determined by taking into account all increases in liabilities of the plan which would have been taken into account in determining such percentage if the applicable benefit increase had taken effect as of the beginning of the plan year.

"(C) PAYMENTS AFTER VALUATION DATE.—In the case of any contribution required by this subsection which is made after the first day of the plan year, the amount of the con-

tribution shall be adjusted in the same manner as it would be under section 430(i)(2) if it were a minimum required contribution for the plan year.

"(D) TREATMENT OF PAYMENT IN COMPUTING MINIMUM REQUIRED CONTRIBUTION.—If any applicable benefit increase to which this subsection applies for any plan year is required to be taken into account in determining the minimum required contribution under section 430 for the plan year, any payment required by this paragraph with respect to the applicable benefit increase shall, for purposes of determining the amount of such minimum required contribution, be treated in the same manner as a contribution for a preceding plan year is treated under section 430(g)(2)(C)(i).

"(3) APPLICABLE BENEFIT INCREASE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable benefit increase' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise as provided in regulations prescribed by the Secretary) which,

but for this subsection, 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.

"(B) EXCEPTION FOR CERTAIN BENEFIT INCREASES.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more plan sponsors, such term shall not include any increase in liabilities of the plan by reason of any increase in benefits pursuant to, and for individuals covered by, the agreements 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.

"(C) EXCEPTION FOR COLLECTIVELY BARGAINED INCREASES NEGOTIATED BEFORE UNDERFUNDING OCCURS.—In the case of a plan maintained pursuant to 1 or more collec-

tive bargaining agreements between employee representatives and 1 or more plan sponsors and ratified in a plan year with respect to which the adjusted funded target liability percentage was at least 80 percent, such term shall not include any increase or change described in subparagraph (A) pursuant to, and for individuals covered by, the agreements which takes effect in any plan year beginning after the plan year in which the agreements are ratified and before the earlier of—

"(i) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof), or

"(ii) the date which is 3 years after the date on which this subsection would otherwise apply but for this subparagraph.

"(D) OTHER EXCEPTIONS.—Such term shall not include any increase in liabilities—

"(i) by reason of a plan amendment if such amendment is required as a condition of qualification under this part, or

"(ii) which is specified in regulations prescribed by the Secretary.

"(4) SPECIAL RULE FOR PLANS IN BANKRUPTCY.—In the case of any period during which the plan sponsor is in bankruptcy—

"(A) paragraphs (1) and (2)(A) shall be applied by substituting '100 percent' for '80 percent', and

"(B) the exceptions under subparagraphs (B) and (C) of paragraph (3) shall not apply.

"(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

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

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

"(A) 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 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(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 by regulations.

"(B) EXCEPTION FOR CERTAIN PAYMENTS.—In the case of any prohibited period

described in paragraph (3)(A), 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 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 (5), 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)(5)(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 valu-

ation date for the plan year, the plan's adjusted funded target liability percentage is at least 100 percent.

"(4) RULES RELATING TO REQUIRED CONTRIBUTIONS.—

"(A) SECURITY MAY BE PROVIDED.—

"(i) IN GENERAL.—A plan sponsor shall not be treated as failing to meet the requirements of paragraph (1) if the plan sponsor provides security in a form meeting the requirements of clause (ii) for any portion of the amount required to be contributed under paragraph (1) but which is not so contributed. Such security shall be provided no later than the due date of the contribution to which it relates or such earlier date as the Secretary may prescribe.

"(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

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.

"(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 430(i), or

"(III) if the adjusted funded target liability 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 the end of the prohibited period for the failure to which the security relates. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the adjusted funded target liability percentage.

"(v) SECURITY NOT TREATED AS PLAN ASSET.—Any security under this subparagraph shall not be taken into account in determining the value of the plan's assets except to the extent provided in clause (i).

"(B) TREATMENT AS UNPAID MINIMUM REQUIRED CONTRIBUTION.—The amount of any required contribution which a plan sponsor fails to make under paragraph (1) by the close of the plan year to which the contribution relates 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.

"(5) 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) FREEZE ON PLAN BENEFITS.—

"(1) IN GENERAL.—The requirements of this subsection are met if the plan provides that, notwithstanding any other provision of the plan, during a freeze period—

"(A) the accrued benefit, any death or disability benefit, and any social security supple-

ment described in the last sentence of section 411(a)(9) of each participant are frozen at the amount of such benefit or supplement immediately before the freeze period, and

"(B) all other benefits provided 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) if they had been implemented by a plan amendment adopted immediately before the freeze period.

"(2) FREEZE PERIOD.—For purposes of paragraph (1), the term 'freeze period' means any period treated as a prohibited period under subsection (c)(3)(A). A rule similar to the rule of subsection (c)(5) shall apply for purposes of this subsection.

"(3) 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 plan sponsors and ratified in a plan year with respect to which the funded target liability percentage as of the valuation date was at least 60 percent, this subsection shall not be applied to benefits pursuant to, and individ-

uals covered by, such agreement for plan years beginning before the earlier of—

"(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof), or

"(B) the date which is 3 years after the date the freeze period would otherwise begin under this subsection.

"(e) DEFINITIONS AND RULES RELATING TO APPLICATION OF LIMITATIONS.—For purposes of this section—

"(1) FUNDED TARGET LIABILITY PERCENTAGE.—

"(A) IN GENERAL.—The term 'funded target liability percentage' means, with respect to any plan year, the percentage equal to a fraction—

"(i) the numerator of which is the value of assets of the plan determined under section 430(g)(2) for the plan year, and

"(ii) the denominator of which is the target liability for the plan year.

"(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 clauses (i) and (ii) of subparagraph (A) 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.

"(2) CERTIFICATION.—A certification by an enrolled actuary under this section shall be made in such form and manner as the Secretary may prescribe and shall be based on the information available to the enrolled actuary. The enrolled actuary shall notify the plan administrator of any change in the funded target liability percentage if the actual target liability or asset value differs from that used for the certification.

"(3) CONTRIBUTIONS INCLUDED IN ASSETS.—In making a certification under paragraph (2) for purposes of this section, the determination of whether and to what extent contributions are to be taken into account in computing the assets of the plan shall be made in the same manner as under section 430(g)(2)(C), except that contributions in excess of

the minimum required contribution for any preceding plan year shall not be taken into account unless made before the date of the certification.

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

"(A) OPERATION OF PLAN AFTER PERIOD.—Unless the plan provides otherwise, the accrual and payment of benefits which were prohibited, frozen, or eliminated under subsection (c) or (d) shall resume, effective as of the day following the close of a prohibited or freeze period under subsection (c) or (d), whichever is applicable.

"(B) TREATMENT OF AFFECTED BENEFITS.—Nothing in this paragraph shall be construed as affecting the plan's treatment of benefits prohibited, frozen, or eliminated during the prohibited or freeze period.

"(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

"(1) COORDINATION WITH MINIMUM REQUIRED CONTRIBUTIONS.—Any contribution by a plan sponsor for a plan year shall be allocated first to any minimum required contribution under section 430

for any plan year the valuation date of which occurs on or before the date of the contribution by the plan sponsor until all such minimum required contributions are fully made and then to the contributions required under subsection (b), (c), or (d).

"(2) TERMS USED IN SECTION 430.—Any term used in this section which is also used in section 430 shall have the meaning given such term by section 430.

"(3) BANKRUPTCY.—A plan sponsor is in bankruptcy during any period the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law.

"(4) PLAN SPONSOR.—The term 'plan sponsor' means the employer referred to in section 412(c)(without regard to paragraph (2)).

"(5) PLANS IN EXISTENCE LESS THAN 5 YEARS.—This section (other than subsection (c)) shall not apply to a plan for each of the plan's first 5 plan years. For purposes of this paragraph, plan years of any predecessor plan shall be taken into account. Notwithstanding this paragraph, subsections (b) and (d) shall apply during any period the plan sponsor is in bankruptcy.

"(6) COORDINATION WITH OTHER REQUIREMENTS.—A trust forming part of a plan to which this section applies shall not be treated as failing to constitute a qualified trust merely because the plan does not make a payment required under the plan because the plan is prohibited from making the payment by reason of this section.

"(7) 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) CONFORMING AMENDMENTS.—Part III of subchapter D of chapter 1 of such Code, as added by this subtitle, is amended by striking the heading and table of sections and inserting:

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

"Subpart A. Minimum funding standards for pension plans.
"Subpart B. Limitations on benefit improvements by single-employer plans.

"Subpart A—Minimum Funding Standards for Pension Plans

"Sec. 430. Minimum funding standards for plans other than multiemployer plans.
"Sec. 431. Minimum funding standards for multiemployer plans.".

(c) EFFECTIVE DATE.—

(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 the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

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

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

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to

conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

SEC. 304. 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 single-employer 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 target liability 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(f) 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 at-risk target liability for the plan year (determined as if section 430(f) applied to the plan), plus

"(ii) the at-risk 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 target liability for the plan year, and

"(ii) the amount by which the target liability 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 subsections (j)(1) and (l) 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 (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(g)(4))) shall be treated as one plan, but only participants with respect to 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 section 323 of 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) 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 unfunded target liability 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) (without regard to subparagraph (B) thereof) of section 431(c)''.

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

SEC. 305. 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 UNDERFUNDED PLANS AND PLANS MAINTAINED BY FINANCIALLY WEAK EMPLOYERS.—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)(A) Section 401(a) of such Code, as amended by section 101 of this Act, is amended by striking paragraphs (32) and (33) and by redesignating

paragraphs (34) and (35) as paragraphs (32) and (33).

(B)(i) Section 401(a)(28)(B)(v) of such Code, as added by section 101 of this Act, is amended by striking ''paragraph (35)(E)'' and inserting ''paragraph (33)(E)''.

(ii) Section 409(h)(7) of such Code, as amended by section 101 of this Act, is amended by striking ''section 401(a)(35)'' and inserting ''section 401(a)(33)''.

(iii) Section 101(c)(3)(C) of this Act is amended by striking ''section 401(a)(35)(H)'' and inserting ''section 401(a)(33)(H)''.

(iv) Subsections (e) and (f) of section 4980H(e) of such Code, as added by section 102 of this Act, are each amended by striking ''section 401(a)(35)'' each place it appears and inserting ''section 401(a)(33)''.

(v) Section 4980I(f)(1) of such Code, as added by section 103 of this Act, is amended by striking ''section 401(a)(35)(E)(iv)'' and inserting ''section 401(a)(33)(E)(iv)''.

(vi) Section 4980J(e)(9)(B) of such Code, as added by section 104 of this Act, is amended by

striking ''section 401(a)(35)(E)(iv)'' and inserting ''section 401(a)(33)(E)(iv)''.

(vii) Section 101(i)(8)(B) of the Employee Retirement Income Security Act of 1974, as amended by section 104 of this Act, is amended by striking ''section 401(a)(35)(E)(iv)'' and inserting ''401(a)(33)(E)(iv)''.

(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(g)(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(g)(3)'', and

(B) by striking ''paragraphs (4), (5), and (6) of section 412(i)'' and inserting ''subparagraphs (D), (E), and (F) of section 412(g)(3)'', and

(3) by striking ''section 412(c)(8)'' in subsection (d)(6)(A) and inserting ''section 412(g)(2)''.

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

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

(d) SPECIAL RULES FOR MULTIEMPLOYER PLANS.—

(1) Section 418(b)(2) of such Code is amended—

(A) by striking "section 412(b)(2)" in subparagraph (A) and inserting "section 431(b)(2)", and

(B) by striking "section 412(b)(3)(B)" in subparagraph (B) and inserting "section 431(b)(3)(B)".

(2) Section 418B of such Code is amended—

(A) by striking "section 412(b)(2)(A) or (B)" in subsection (d)(1)(B) and inserting "section 431(b)(2)(A) or (B)",

(B) by striking "section 412(c)(8)" in subsection (e) and inserting "section 412(g)(2)", and

(C) by striking "section 412(c)(3)" in subsection (g) and inserting "section 431(c)(3)".

(3) Section 418D(a)(2) of such Code is amended—

(A) by striking ''section 412(c)(8)'' and inserting ''section 412(g)(2)'', and

(B) by striking ''section 412(c)(10)'' and inserting ''section 431(c)(8)''.

(e) 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 the amount determined under subparagraph (A) or (B) of section 430(g)(2) as of the valuation date for the plan year in which the transfer occurs, over

''(B) 125 percent of the sum of the target liability 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 to a health benefits account, any assets transferred in a plan year on or before the valuation date for the plan year (and any

income allocable thereto) shall, for purposes of section 430, not be treated as assets in the plan as of the valuation date. The prefunding balance under section 430(e) for the plan year shall be reduced by the assets so transferred.''.

(f) EXCISE TAXES.—

(1) 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 plan other than a multiemployer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and

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

''(b) ADDITIONAL TAX.—If—

''(1) a tax is imposed under subsection (a)(1) on any unpaid required minimum contribution and

such amount remains unpaid as of the close of the taxable period, or

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

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

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

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

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

"(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

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

"(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years in the order in which such contributions became due and then to the minimum required contribution under section 430 for the plan year.".

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

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

(A) by striking "section 412(m)(5)" and inserting "section 430(j)(5)", 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))".

(g) 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 unpaid minimum required contributions 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.''.

(h) DEFINITIONS.—Section 414 of such Code (relating to definitions and special rules) is amended by adding at the end the following:

''(w) OTHER DEFINITIONS.—For purposes of this part—

''(1) AFFECTED PARTY.—The term 'affected party' means, with respect to any plan—

''(A) a participant,

''(B) a beneficiary,

''(C) an alternate payee (as defined in section 414(p)(8)),

"(D) each employee organization representing participants in the plan, and

"(E) each employer with an obligation to make contributions to the plan.

"(2) SINGLE-EMPLOYER PLAN.—The term 'single-employer plan' means a defined benefit plan, or a defined contribution plan, which is not a multiemployer plan.".

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as prescribed in paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2006.

(2) EXCISE TAX.—The amendments made by subsection (f) shall apply to any taxable year with or within which a plan year beginning after December 31, 2006, ends.

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

SEC. 311. MODIFICATIONS OF THE MINIMUM FUNDING STANDARDS.

(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 through 308 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1086) are repealed.

(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of subtitle B of title I of such Act (as amended by subsection (a)) is amended 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 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 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 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 and any required installments under section 303(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.

"(c) VARIANCE FROM MINIMUM FUNDING STANDARD.—

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

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

"(i) 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(d), and

"(ii) 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), except that the interest rate used for purposes of computing the amortization charge described in such section shall be the rate determined under section 6621(b) of the Internal Revenue Code of 1986.

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

graph (B) of any waived funding deficiency for any preceding plan year.

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

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

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

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

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

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, 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 under this subsection and not satisfied by employer contributions.

"(4) 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.

"(5) 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—

"(A) with respect to such employer, and

"(B) 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 subsection.

"(d) EXTENSION OF AMORTIZATION PERIODS.—In the case of a multiemployer plan, the period of years required to amortize any unfunded liability (described in any clause of section 304(b)(2)(B)) of the plan may be extended by the Secretary of the Treasury for a period of time (not in excess of 10 years) if the Secretary of the Treasury determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if the Secretary of the Treasury determines that the failure to permit such extension would—

"(1) result in—

"(A) a substantial risk to the voluntary continuation of the plan, or

"(B) a substantial curtailment of pension benefit levels or employee compensation, and

"(2) be adverse to the interests of plan participants in the aggregate.

The interest rate applicable for any plan year under any arrangement entered into by the Secretary of the Treasury in connection with an extension granted under this subsection shall be the rate determined under section 6621(b) of the Internal Revenue Code of 1986.

"(e) REQUIREMENTS RELATING TO WAIVERS AND EXTENSIONS.—

"(1) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—If—

"(A) a waiver under subsection (c)(1) or an extension of time under subsection (d) is in effect with respect to the plan, or

"(B) a plan amendment described in subsection (f)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months for multiemployer plans),

no applicable benefit increase shall take effect. If an applicable benefit increase takes effect 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 increase takes effect.

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

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

"(B) only repeals an amendment described in subsection (f)(2) which reduced the accrued benefit of any participant, or

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

"(3) APPLICABLE BENEFIT INCREASE.—The term 'applicable benefit increase' has the meaning given such term by section 305(b)(3) without regard to subparagraph (B) or (C) thereof.

"(4) SECURITY FOR WAIVERS; 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 to provide security to such plan as a condition for granting or modifying a waiver under subsection (c).

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

"(I) the Pension Benefit Guaranty Corporation, or

"(II) 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 subsection (c) with respect to a plan described in subparagraph (A)(i)—

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

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

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

"(ii) consider—

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

"(II) any views of any employee organization (within the meaning of

section 3(4)) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

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

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

''(I) the aggregate unpaid minimum required contributions (within the meaning of section 4971 of the Internal Revenue Code of 1986) for the plan year and all preceding plan years, and

''(II) the present value of all waiver amortization payments under

section 303(d) determined for the plan year and all succeeding plan years,

is less than $1,000,000.

"(ii) TREATMENT OF PENDING WAIVERS.—For purposes of clause (i)(I), minimum required contributions shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under subsection (c) or section 412(d) of the Internal Revenue Code of 1986 which are pending with respect to such plan were denied.

"(5) ADDITIONAL REQUIREMENTS.—

"(A) ADVANCE NOTICE.—The Secretary of the Treasury shall, before granting a waiver under subsection (c) or an extension under subsection (d), require each applicant to provide evidence satisfactory to the Secretary of the Treasury that the applicant has provided notice of the filing of the application for such waiver or extension to each affected party (as defined in section 4001(a)(21)) other than the Corporation, and each employer with an obligation to make contributions 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 (within the meaning of section 4041(d)).

"(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).

"(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

"(1) CHANGE IN METHOD OR YEAR.—If the funding method 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 2 and one-half months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

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

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

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

"(3) CONTROLLED GROUP.—For purposes of this section and section 303, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.".

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

"Sec. 302. Minimum funding standards.".

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

SEC. 312. FUNDING RULES APPLICABLE TO SINGLE-EMPLOYER 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 311 of this Act, is amended by inserting after section 302 the following new section:

"MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS

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

"(1) IN GENERAL.—The minimum required contribution for a defined benefit plan to which section 302(a)(2)(A) applies for any plan year shall, for

purposes of this section and section 302, be equal to the sum of—

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

"(B) the aggregate amortization payment (if any) for the plan year, and

"(C) the waiver amortization payment (if any) for the plan year.

In no event shall the sum of the amounts determined under subparagraphs (B) and (C) for any plan year exceed the unfunded target liability for the plan year.

"(2) LIMITATION ON ANNUAL INCREASES OR DECREASES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the minimum required contribution for any plan year beginning after 2007—

"(i) shall not exceed the minimum required contribution for the preceding plan year (determined after application of this paragraph and without regard to any adjustment under subsection (i)(2)), increased by the greater of—

"(I) 30 percent of the target normal cost of the plan for the preceding plan year, or

"(II) 2 percent of the target liability of the plan for the preceding plan year, and

"(ii) shall not be less than such minimum required contribution for the preceding plan year, reduced by the greater of the amounts under subclause (I) or (II) of clause (i).

"(B) SPECIAL RULES FOR BENEFIT INCREASES OR DECREASES DURING PLAN YEAR.—If an applicable benefit increase (as defined in section 305(b)(3) without regard to subparagraph (B) or (C) thereof) takes effect during the current plan year—

"(i) the minimum required contribution for the current plan year for purposes of applying subparagraph (A) shall be determined without regard to any increase in such contribution attributable to the applicable benefit increase, and

"(ii) the amount determined under subparagraph (A) (after application of

clause (i)) shall be increased by the amount of the increase in the minimum required contribution disregarded under clause (i).

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

''(C) SPECIAL RULES RELATING TO PRECEDING YEAR.—For purposes of subparagraph (A)—

''(i) all target liability amortization installments and waiver amortization installments under subsections (c) and (d) which were determined with respect to any amortizable target liability or waived funding deficiency which is fully amortized as of the close of the preceding plan year shall not be taken into account in determining the minimum required contribution for the preceding plan year, and

''(ii) if paragraph (3) applied for the preceding plan year, the minimum required contribution for the preceding plan year shall be treated as being equal to the target normal cost for such year.

"(3) SPECIAL RULES FOR PLANS WHERE ASSETS EXCEED TARGET LIABILITY.—If, as of the valuation date for any plan year, the value of the assets of the plan (reduced as provided in subsection (e)(3)) equals or exceeds the target liability for the plan year (in this subsection referred to as the 'current plan year')—

"(A) the minimum required contribution for the current plan year shall be equal to target normal cost, reduced (but not below zero) by the amount of any such excess, and

"(B) all target liability amortization installments and waiver amortization installments under subsections (c) and (d) which were determined with respect to any amortizable target liability or waived funding deficiency for the current plan year or any preceding plan year shall not be taken into account for any succeeding plan year.

"(b) TARGET NORMAL COST.—For purposes of this section—

"(1) IN GENERAL.—The term 'target normal cost' means, with respect to any plan year, the present value of all benefits which accrue or are earned under the plan during the plan year. If any

1 benefit attributable to services performed in a pre-
2 ceding plan year is increased by reason of any in-
3 crease in compensation during the current plan year,
4 the increase shall be treated as accruing during the
5 current plan year.

6 ''(2) FINANCIALLY-WEAK EMPLOYERS.—If a
7 plan sponsor of a plan for any plan year is a finan-
8 cially-weak employer for any plan year, the target
9 normal cost of the plan for the plan year shall be
10 the at-risk target normal cost determined under sub-
11 section (f).

12 ''(c) DEFINITIONS AND RULES RELATING TO TAR-
13 GET LIABILITY .—For purposes of this section—

14 ''(1) TARGET LIABILITY.—

15 ''(A) IN GENERAL.—The term 'target li-
16 ability' means, with respect to any plan year,
17 the present value of all benefits accrued or
18 earned under the plan as of the beginning of
19 the plan year.

20 ''(B) FINANCIALLY-WEAK EMPLOYERS.—If
21 a plan sponsor of a plan for any plan year is
22 a financially-weak employer for any plan year,
23 the target liability of the plan for the plan year
24 shall be the at-risk target liability determined
25 under subsection (f).

"(2) UNFUNDED TARGET LIABILITY.—The term 'unfunded target liability' means, with respect to any plan year, the excess (if any) of—

"(A) the target liability for the plan year, over

"(B) the value of the assets of the plan (reduced as provided under subsection (e)(3)) as of the valuation date.

"(3) AGGREGATE AMORTIZATION PAYMENTS.—For purposes of this section—

"(A) AGGREGATE AMORTIZATION PAYMENT.—The aggregate amortization payment for any plan year is the aggregate amount of the target liability amortization installments determined for the plan year with respect to any amortizable target liability for the plan year and each of the 6 preceding plan years.

"(B) AMORTIZABLE TARGET LIABILITY.—

"(i) IN GENERAL.—The term 'amortizable target liability' means, with respect to any plan year, the amount (if any) by which the unfunded target liability for the current plan year is more or less than the amount determined under clause (ii).

"(ii) AMOUNTS PREVIOUSLY ACCOUNTED FOR.—The amount determined under this clause is the present value of all target liability amortization installments and waiver amortization installments under this subsection and subsection (d) which were determined for the current plan year or any succeeding plan year with respect to any amortizable target liability or waived funding deficiency for any plan year preceding the current plan year.

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

"(i) the liability shall be amortized in 7 level amortization amounts over the 7-plan year period beginning with the plan year, and

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

"(D) COMPUTATION ASSUMPTIONS.—In determining the present value of any amortiza-

tion installment under subparagraph (B)(ii), or the amount of any amortization installment under subparagraph (C), the following rules shall apply:

"(i) Each amortization installment shall be treated as made on the valuation date for the plan year for which the installment is determined.

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

"(4) TRANSITION RULE FOR AMORTIZATION OF UNFUNDED TARGET LIABILITY.—

"(A) 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 target liability shall be taken into account under paragraph (2)(A) in determining unfunded target liability for the plan year.

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

"(i) IN GENERAL.—Except as provided in clause (ii), the applicable percent-

age 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)(1)(B)(ii), 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.

"(d) AMORTIZATION OF WAIVED FUNDING DEFICIENCY.—For purposes of this section—

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

"(2) WAIVER AMORTIZATION INSTALLMENTS.—If a plan has a waived funding deficiency for any plan year—

"(A) the deficiency shall be amortized in 5 level amortization amounts over the 5-plan year

period beginning with the succeeding plan year, and

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

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

"(A) Each amortization installment will be treated as made on the valuation date for the plan year for which the installment is determined.

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

"(4) WAIVED FUNDING DEFICIENCY.—The waived funding deficiency of a plan for any plan year is the amount of any waived funding deficiency for the plan year under section 302(c).

"(e) 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 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 applicable effective interest rate (as defined in subsection (g)(3)) 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 305 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 net gain or loss with respect to plan assets for the preceding plan year. Notwithstanding subsection (g)(2)(B), such rate of net gain or loss 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) REDUCTION IN VALUE OF ASSETS.—Solely for purposes of applying subsections (a)(3) and (c)(2) in determining the minimum required contribution under this section, the value of the plan as-

sets otherwise determined under subsection (g)(2) shall be reduced by the amount of the prefunding balance under this subsection.

"(f) SPECIAL RULES FOR LARGE PLANS MAINTAINED BY FINANCIALLY-WEAK EMPLOYERS.—

"(1) DETERMINATION OF TARGET LIABILITY AND NORMAL COST.—

"(A) IN GENERAL.—If, as of the valuation date for any plan year, any plan sponsor of a plan to which this section applies is a financially-weak employer, then, in applying this section for the plan year, the at-risk target liability and at-risk target normal cost shall (if greater) be substituted for the target liability and target normal cost, respectively. Such substitution shall not be applied for any plan year for which the plan has no unfunded target liability (determined without regard to this subsection or any reduction in the value of assets under subsection (e)(3)).

"(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)(1)(B)(ii) 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 a 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 described in section 1381(a) of such Code more than 50 percent of the ownership or capital and profits interests of which are held—

"(I) by producers of agricultural products, or

"(II) organizations described in section 1381(a) of such Code meeting the requirements of subclause (I).

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

"(2) AT-RISK AMOUNTS.—

"(A) IN GENERAL.—Except as provided in paragraph (3), the at-risk target liability and at-risk target normal cost shall be determined in the same manner as the target liability and target normal cost, except that the actuarial assumptions described in subparagraph (B) shall be used in computing such amounts.

"(B) 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 shall be assumed to retire at the earliest retirement age 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.

"(3) PLAN SPONSORS FINANCIALLY WEAK FOR LESS THAN 5 YEARS.—

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

"(i) the applicable percentage of the at-risk target liability or the at-risk target normal cost, whichever is applicable, determined under this subsection (without regard to this paragraph), and

"(ii) the product of the target liability or the target normal cost, whichever is applicable, determined without regard to this subsection, and a percentage equal to 100 percent minus the applicable percentage.

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

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

"(4) FINANCIALLY-WEAK EMPLOYER.—

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

"(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(f)(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. Such regulations shall also provide for the application of paragraph (5) in the case of employers treated as financially weak under such regulations.

"(5) DETERMINATION OF CONSECUTIVE PERIODS WHERE EMPLOYER IS FINANCIALLY WEAK.—

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

"(i) this subsection shall not apply for the plan year, and

"(ii) in applying this subsection for any succeeding plan year, the plan year described in clause (i) and any preceding plan year shall not be taken into account in determining any consecutive period of plan years under paragraphs (3) and (4)(A).

"(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 paragraphs (3) and (4)(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 paragraphs (3) and (4)(A).

"(iii) IMPROVEMENT YEAR.—For purposes of this subparagraph, the term 'improvement year' means any plan year for which any rating described in clause (i) or (ii) of paragraph (4)(A) is higher than such rating for the preceding plan year.

"(6) YEARS BEFORE EFFECTIVE DATE.—For purposes of paragraphs (3) and (4), plan years beginning before 2007 shall not be taken into account.

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

"(1) TIME FOR MAKING DETERMINATIONS.—

"(A) IN GENERAL.—Except as otherwise provided in this section, all determinations under this section for a plan year shall be made as of the valuation date of the plan for the plan year.

"(B) VALUATION DATE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the valuation date is the first day of the plan year.

"(ii) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 100 or fewer participants, a plan may designate any day during the plan year as its valuation date for the plan year and succeeding plan years. For purposes of this clause, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group (as defined in section 302(f)(3))) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

"(iii) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—

"(I) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, clause (ii) shall apply to such plan by taking into account the number of participants the plan is reasonably expected

to have on days during such first plan year.

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

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

"(A) IN GENERAL.—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 4th 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).

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

"(i) 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 applicable effective interest rate for the preceding plan year to which the contribution is properly allocable.

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

"(3) APPLICABLE EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'applicable effective interest rate' means, with respect to any plan year, the single rate of interest which, if used to determine the present value of benefits earned or accrued under the plan as of the beginning of the plan year, would result in an amount equal to the target liability for the plan year.

"(h) ACTUARIAL ASSUMPTIONS AND METHODS.—For purposes of this section—

"(1) ACTUARIAL ASSUMPTIONS.—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 RATE ASSUMPTIONS USED.—

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

"(i) in the case of plan years beginning in 2007 or 2008, by using the phase-in yield curve method (as defined in subparagraph (C)), and

"(ii) in the case of plan years beginning after 2008, by using the yield curve method (as defined in subparagraph (B)).

"(B) YIELD CURVE METHOD.—For purposes of this paragraph—

"(i) IN GENERAL.—The yield curve method is a method under which present

value or other amounts requiring interest rate assumptions are 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.

"(C) PHASE-IN YIELD CURVE METHOD.—

"(i) IN GENERAL.—Present value or any other amount requiring the use of interest rate assumptions 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 (B), and

"(II) the product of such amount determined by using the interest rate rules in effect under section 302(b)(5) for plan years beginning in 2006 and a percentage equal to 100 percent minus the applicable percentage.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33 percent for plan years beginning in 2007 and 67 percent for plan years beginning in 2008.

"(3) MORTALITY TABLE USED.—

"(A) SECRETARIAL AUTHORITY.—The Secretary of the Treasury shall by regulation prescribe mortality tables to be used 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 of the Treasury shall take

1 into account results of available independent
2 studies of mortality of individuals covered by
3 pension plans.

4 "(B) SEPARATE MORTALITY TABLES FOR
5 THE DISABLED.—Notwithstanding subpara-
6 graph (A)—

7 "(i) IN GENERAL.—The Secretary of
8 the Treasury shall establish mortality ta-
9 bles which may be used (in lieu of the ta-
10 bles under subparagraph (A)) under this
11 subsection for individuals who are entitled
12 to benefits under the plan on account of
13 disability. The Secretary of the Treasury
14 shall establish separate tables for individ-
15 uals whose disabilities occur in plan years
16 beginning before January 1, 1995, and for
17 individuals whose disabilities occur in plan
18 years beginning on or after such date.

19 "(ii) SPECIAL RULE FOR DISABILITIES
20 OCCURRING AFTER 1994.—In the case of
21 disabilities occurring in plan years begin-
22 ning after December 31, 1994, the tables
23 under clause (i) shall apply only with re-
24 spect to individuals described in such sub-
25 clause who are disabled within the meaning

of title II of the Social Security Act and the regulations thereunder.

"(C) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this paragraph and shall, to the extent the Secretary of the Treasury determines necessary, update the tables to reflect the actual experience of pension plans and projected trends in such experience.

"(4) TREATMENT OF OPTIONAL FORMS OF BENEFITS.—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 payments will be made in an optional form of benefit provided under the plan (including lump sum payments), and

"(B) any differences between the present value of any such optional form of benefit and the present value of the future payments used in computing target normal costs and target liability under this section.

"(5) APPROVAL REQUIRED FOR CERTAIN CHANGES IN ASSUMPTIONS BY CERTAIN PLANS.—

"(A) IN GENERAL.—No actuarial assumption used to determine the target liability for a plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury. The preceding sentence shall not apply to changes required under paragraph (2) or (3) with respect to any assumption.

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

"(i) the plan is a defined benefit plan to which title IV applies;

"(ii) the aggregate unfunded target liabilities as of the close of the preceding plan year of—

"(I) such plan, and

"(II) all other plans to which title IV applies maintained by persons which are liable for payment of contributions to such plan under section 302(b),

exceed $50,000,000; and

"(iii) the change in assumptions (determined after taking into account any changes as a result of the application of

paragraphs (2) and (3)) results in a decrease in the unfunded target liability of the plan for the current plan year which—

"(I) exceeds $50,000,000, or

"(II) exceeds $5,000,000 and is 5 percent or more of the target liability of the plan before such change.

"(i) PAYMENT OF MINIMUM REQUIRED CONTRIBUTION.—

"(1) IN GENERAL.—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 minimum required contribution for a plan year which is made on a date other than the valuation date for such plan year shall be properly adjusted for interest accruing for the period between the valuation date and the payment date, determined by using the applicable effective interest rate (as defined in subsection (g)(3)) for the plan year.

"(j) QUARTERLY CONTRIBUTIONS REQUIRED.—

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

"(A) IN GENERAL.—In the case of a plan to which this subsection applies, the employer maintaining the plan shall make the required installments under this subsection 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 subsection (i)(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 subsection (i)(2) plus 5 percentage points.

"(B) PLANS TO WHICH SUBSECTION APPLIES.—This subsection applies to any defined benefit plan to which this section applies other than a plan which—

"(i) is a plan described in subsection (g)(1)(B)(ii)), or

"(ii) had an unfunded target liability of $1,000,000 or less for the preceding plan year.

"(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

"(A) 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.

"(B) PERIOD OF UNDERPAYMENT.—The period for which interest is charged under this subsection with regard 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.

"(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

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

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

"(B) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15

In the case of the following required installments:	The due date is:
3rd	October 15
4th	January 15 of the following year.

1 ''(4) AMOUNT OF REQUIRED INSTALLMENT.—
2 For purposes of this subsection—
3 ''(A) IN GENERAL.—The amount of any
4 required installment shall be 25 percent of the
5 required annual payment.
6 ''(B) REQUIRED ANNUAL PAYMENT.—For
7 purposes of subparagraph (A), the term 're-
8 quired annual payment' means the lesser of—
9 ''(i) 90 percent of the minimum re-
10 quired contribution under subsection (a)
11 required to be contributed to or under the
12 plan by the employer for the plan year, or
13 ''(ii) 100 percent of the minimum re-
14 quired contribution so required for the pre-
15 ceding plan year (without regard to any
16 waiver under section 302(c)).
17 Clause (ii) shall not apply if the preceding plan
18 year was not a year of 12 months. In the case
19 of any plan year beginning in 2007, the amount
20 under clause (ii) for the preceding plan year
21 shall be determined by reference to the amount
22 required to be contributed to or under the plan

under section 302 (as such section was in effect before the date of the enactment of this part).

"(5) LIQUIDITY REQUIREMENT.—

"(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment 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 defined benefit plan—

"(i) to which this subsection applies for a plan year, and

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

"(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1), 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.—In no event shall the increase in the amount of any required installment under subparagraph (A) exceed the sum of the unfunded target liability and target normal cost for the plan year.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(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 the base amount with respect to such quarter over 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 funded target liability percentage (as defined in section 305(e)) 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.

"(6) FISCAL YEARS AND SHORT YEARS.—

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

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

"(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 required installment under subsection (j) or any other payment required under this section before the due date for such installment or other payment, and

"(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other 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 per-

son 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 for any plan year for which the funded target liability percentage (within the meaning of section 305(e)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 does not apply.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest) 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 installment or other payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required installment or other 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 (as defined in section 302(f)(3)) of the contributing sponsor).

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

"(l) REGULATIONS.—The Secretary of the Treasury shall prescribe such regulations as are necessary to carry out the provisions of this section, including regulations—

"(1) for the proper treatment of increases in liabilities of any plan pursuant to plan amendments which are adopted, or which take effect, on a date during the plan year other than the valuation date,

"(2) for the application of any small plan exception under this section in cases of mergers and acquisitions, and

"(3) for the application of this section in the case of a plan maintained by more than one employer.

"MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

"SEC. 304. (a) IN GENERAL.—In the case of a multiemployer plan to which this section 302(a)(2)(C) applies, the accumulated funding deficiency of the plan for any plan year for purposes of section 302 shall be—

"(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

1 years (beginning with the first plan year to which
2 section 302 applies to the plan) over the total credits
3 to such account for such years, or
4 "(2) if the multiemployer plan is in reorganiza-
5 tion for any plan year, the accumulated funding de-
6 ficiency of the plan determined under section 4243.
7 "(b) FUNDING STANDARD ACCOUNT.—
8 "(1) ACCOUNT REQUIRED.—Each multiem-
9 ployer plan to which this section applies shall estab-
10 lish and maintain a funding standard account. Such
11 account shall be credited and charged solely as pro-
12 vided in this section.
13 "(2) CHARGES TO ACCOUNT.—For a plan year,
14 the funding standard account shall be charged with
15 the sum of—
16 "(A) the normal cost of the plan for the
17 plan year,
18 "(B) the amounts necessary to amortize in
19 equal annual installments (until fully amor-
20 tized)—
21 "(i) in the case of a plan in existence
22 on January 1, 1974, the unfunded past
23 service liability under the plan on the first
24 day of the first plan year to which this sec-

tion applies, over a period of 40 plan years,

"(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years,

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

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

"(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

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

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

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

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

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

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

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

"(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 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 30 plan years,

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

"(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of this section), the excess (if

any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

"(4) 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.

"(5) 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.

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

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

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

"(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results

from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

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

"(i) was adopted before such date, and

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

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

"(7) SPECIAL RULES.—For purposes of this section—

"(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's with-

drawal 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 or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 shall reduce the amount of contributions considered received by the plan for the plan year.

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

"(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the

date of the enactment of this section) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss was deferred in the same manner as required under such section (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

"(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 302 in such manner as determined by the Secretary of the Treasury.

"(c) SPECIAL RULES.—

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

"(2) VALUATION OF ASSETS.—

"(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actu-

arial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

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

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

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

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

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

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

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

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

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

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

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

"(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).

For purposes of subparagraph (A), unless otherwise provided by the plan, the accrued liability under a plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consider-

ation section 411(d)(3)) of the Internal Revenue Code of 1986).

"(B) MINIMUM AMOUNT.—

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

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

"(II) the value of the plan's assets determined under paragraph (2).

"(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

"(C) CURRENT LIABILITY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For 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 of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

"(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (D).

"(iv) MORTALITY TABLES.—

"(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary

of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

"(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

"(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

"(I) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability 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 subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

"(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, update the tables to reflect the actual experience of pension plans and projected trends in such experience.

"(D) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

"(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(5) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 per-

cent 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)(C) without regard to clause (iv) thereof).

"(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

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

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of such Act, as amended by this Act, 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 plans.
"Sec. 304. Minimum funding standards for multiemployer plans.".

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

SEC. 313. LIMITATION ON BENEFIT IMPROVEMENTS BY SINGLE-EMPLOYER PLANS WHICH ARE UNDERFUNDED OR MAINTAINED BY FINANCIALLY WEAK OR BANKRUPT EMPLOYERS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by sections 311 and 312 of this Act) is amended by inserting after section 304 the following new section:

"LIMITATIONS ON BENEFIT IMPROVEMENTS BY SINGLE-EMPLOYER PLANS WHICH ARE UNDERFUNDED OR MAINTAINED BY FINANCIALLY WEAK OR BANKRUPT EMPLOYERS

"SEC. 305. (a) BENEFIT LIMITATION REQUIREMENT.—Except as provided in subsection (f)(5), a defined benefit plan which is a single-employer plan to which section 302 applies shall meet the requirements of subsections (b), (c), and (d).

"(b) LIMITATIONS ON BENEFIT INCREASES.—

"(1) IN GENERAL.—A plan meets the requirements of this subsection for any plan year if the plan provides that if the plan's adjusted funded target liability percentage for the preceding plan year is less than 80 percent, any applicable benefit increase shall not take effect during the plan year until the plan has met the additional funding requirements of paragraph (2).

"(2) ADDITIONAL FUNDING REQUIREMENTS.—

"(A) IN GENERAL.—The requirements of this paragraph are met with respect to any applicable benefit increase for any plan year if the plan sponsor, in addition to any other contribution required under section 303, contributes to or under the plan an 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 the adjusted funded target liability percentage of the plan for the plan year being equal to 80 percent.

"(B) BENEFIT INCREASES COUNTED FOR PURPOSES OF FUNDED PERCENTAGE.—For purposes of subparagraph (A), the adjusted

funded target liability percentage shall be determined by taking into account all increases in liabilities of the plan which would have been taken into account in determining such percentage if the applicable benefit increase had taken effect as of the beginning of the plan year.

"(C) PAYMENTS AFTER VALUATION DATE.—In the case of any contribution required by this subsection which is made after the first day of the plan year, the amount of the contribution shall be adjusted in the same manner as it would be under section 303(i)(2) if it were a minimum required contribution for the plan year.

"(D) TREATMENT OF PAYMENT IN COMPUTING MINIMUM REQUIRED CONTRIBUTION.—If any applicable benefit increase to which this subsection applies for any plan year is required to be taken into account in determining the minimum required contribution under section 303 for the plan year, any payment required by this paragraph with respect to the applicable benefit increase shall, for purposes of determining the amount of such minimum required contribution, be treated in the same manner as

a contribution for a preceding plan year is treated under section 303(g)(2)(C)(i).

"(3) APPLICABLE BENEFIT INCREASE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable benefit increase' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise as provided in regulations prescribed by the Secretary of the Treasury) which, but for this subsection, 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.

"(B) EXCEPTION FOR CERTAIN BENEFIT INCREASES.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more plan sponsors, such term shall not include any increase in liabilities of the plan by reason of any increase in benefits pursuant to, and for individuals covered by, the agree-

ments 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.

"(C) EXCEPTION FOR COLLECTIVELY BARGAINED INCREASES NEGOTIATED BEFORE UNDERFUNDING OCCURS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more plan sponsors and ratified in a plan year with respect to which the adjusted funded target liability percentage was at least 80 percent, such term shall not include any increase or change described in subparagraph (A) pursuant to, and for individuals covered by, the agreements which takes effect in any plan year beginning after the plan year in which the agreements are ratified and before the earlier of—

"(i) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof), or

"(ii) the date which is 3 years after the date on which this subsection would otherwise apply but for this subparagraph.

"(D) EXCEPTIONS.—Such term shall not include any increase in liabilities—

"(i) by reason of a plan amendment if such amendment is required as a condition of qualification under this part, or

"(ii) which is specified in regulations prescribed by the Secretary of the Treasury.

"(4) SPECIAL RULE FOR PLANS IN BANKRUPTCY.—In the case of any period during which the plan sponsor is in bankruptcy—

"(A) paragraphs (1) and (2)(A) shall be applied by substituting '100 percent' for '80 percent', and

"(B) the exceptions under subparagraphs (B) and (C) of paragraph (3) shall not apply.

"(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 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

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

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

"(A) 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 supple-

ments described in the last sentence of section 204(b)(1)(G)), to a participant or beneficiary whose annuity starting date (as defined in section 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.

"(B) EXCEPTION FOR CERTAIN PAYMENTS.—In the case of any prohibited period described in paragraph (3)(A), 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 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 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 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 206(d)(3)(B)(i)) provides otherwise.

''(3) PROHIBITED PERIOD.—For purposes of paragraph (1), the term 'prohibited period' means—

''(A) except as provided in paragraph (5), 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 303(j)(5)(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) RULES RELATING TO REQUIRED CONTRIBUTIONS.—

"(A) SECURITY MAY BE PROVIDED.—

"(i) IN GENERAL.—A plan sponsor shall not be treated as failing to meet the requirements of paragraph (1) if the plan sponsor provides security in a form meeting the requirements of clause (ii) for any portion of the amount required to be contributed under paragraph (1) but which is

not so contributed. Such security shall be provided no later than the due date of the contribution to which it relates or such earlier date as the Secretary of Treasury may prescribe.

"(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,

"(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(i), or

"(III) if the adjusted funded target liability 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 the end of the prohibited period for the failure to which the security relates. The Secretary of the Treasury may prescribe regulations for partial releases of the security by reason of increases in the adjusted funded target liability percentage.

"(v) SECURITY NOT TREATED AS PLAN ASSET.—Any security under this subparagraph shall not be taken into account in determining the value of the

plan's assets except to the extent provided in clause (i).

"(B) TREATMENT AS UNPAID MINIMUM REQUIRED CONTRIBUTION.—The amount of any required contribution which a plan sponsor fails to make under paragraph (1) by the close of the plan year to which the contribution relates shall be treated as an unpaid minimum 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.

"(5) 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 of the Treasury, restore any payments not

made during the prohibited period in effect before the application of this paragraph.

"(d) FREEZE ON PLAN BENEFITS.—

"(1) IN GENERAL.—The requirements of this subsection are met if the plan provides that, notwithstanding any other provision of the plan, during a freeze period—

"(A) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 204(b)(1)(G) of each participant are frozen at the amount of such benefit or supplement immediately before the freeze period, and

"(B) all other benefits provided under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 204(g) if they had been implemented by a plan amendment adopted immediately before the freeze period.

"(2) FREEZE PERIOD.—For purposes of paragraph (1), the term 'freeze period' means any period treated as a prohibited period under subsection (c)(3)(A). A rule similar to the rule of subsection (c)(5) shall apply for purposes of this subsection.

"(3) 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 plan sponsors and ratified in a plan year with respect to which the funded target liability percentage as of the valuation date was at least 60 percent, this subsection shall not be applied to benefits pursuant to, and individuals covered by, such agreement for plan years beginning before the earlier of—

"(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof), or

"(B) the date which is 3 years after the date the freeze period would otherwise begin under this subsection.

"(e) DEFINITIONS AND RULES RELATING TO APPLICATION OF LIMITATIONS.—For purposes of this section—

"(1) FUNDED TARGET LIABILITY PERCENTAGE.—

"(A) IN GENERAL.—The term 'funded target liability percentage' means, with respect to any plan year, the percentage equal to a fraction—

"(i) the numerator of which is the value of assets of the plan determined under section 303(g)(2) for the plan year, and

"(ii) the denominator of which is the target liability for the plan year.

"(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 clauses (i) and (ii) of subparagraph (A) 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.

"(2) CERTIFICATION.—A certification by an enrolled actuary under this section shall be made in such form and manner as the Secretary of the Treasury may prescribe and shall be based on the information available to the enrolled actuary. The enrolled actuary shall notify the plan administrator of any change in the funded target liability percent-

1 age if the actual target liability or asset value differs
2 from that used for the certification.

3 "(3) CONTRIBUTIONS INCLUDED IN ASSETS.—
4 In making a certification under paragraph (2) for
5 purposes of this section, the determination of wheth-
6 er and to what extent contributions are to be taken
7 into account in computing the fair market value of
8 the assets of the plan shall be made in the same
9 manner as under section 303(g)(2)(C), except that
10 contributions in excess of the minimum required
11 contribution for any preceding plan year shall not be
12 taken into account unless made before the date of
13 the certification.

14 "(4) TREATMENT OF PLAN AS OF CLOSE OF
15 PROHIBITED OR FREEZE PERIOD.—For purposes of
16 applying this part—

17 "(A) OPERATION OF PLAN AFTER PE-
18 RIOD.—Unless the plan provides otherwise, the
19 accrual and payment of benefits which were
20 prohibited, frozen, or eliminated under sub-
21 section (c) or (d) shall resume, effective as of
22 the day following the close of a prohibited or
23 freeze period under subsection (c) or (d), which-
24 ever is applicable.

"(B) TREATMENT OF AFFECTED BENEFITS.—Nothing in this paragraph shall be construed as affecting the plan's treatment of benefits prohibited, frozen, or eliminated during the prohibited or freeze period.

"(f) OTHER DEFINITIONS AND RULES.—For purposes of this section—

"(1) COORDINATION WITH MINIMUM REQUIRED CONTRIBUTIONS.—Any contribution by a plan sponsor for a plan year shall be allocated first to any minimum required contribution under section 303 for any plan year the valuation date of which occurs on or before the date of the contribution by the plan sponsor until all such minimum required contributions are fully made and then to the contributions required under subsection (b), (c), or (d).

"(2) TERMS USED IN SECTION 303.—Any term used in this section which is also used in section 303 shall have the meaning given such term by section 303.

"(3) BANKRUPTCY.—A plan sponsor is in bankruptcy during any period the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law.

"(4) PLAN SPONSOR.—The term 'plan sponsor' means the employer referred to in section 302(b) (without regard to paragraph (2)).

"(5) PLANS IN EXISTENCE LESS THAN 5 YEARS.—This section (other than subsection (c)) shall not apply to a plan for each of the plan's first 5 plan years. For purposes of this paragraph, plan years of any predecessor plan shall be taken into account. Notwithstanding this paragraph, subsections (b) and (d) shall apply during any period the plan sponsor is in bankruptcy.

"(6) COORDINATION WITH OTHER REQUIREMENTS.—A plan to which this section applies shall not be treated as failing to meet any other requirement of this Act merely because the plan does not make a payment required under the plan because the plan is prohibited from making the payment by reason of this section.

"(7) 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) CONFORMING AMENDMENTS.—

(1) Section 204 of such Act (29 U.S.C.1054) is amended by striking subsection (i) and by redesignating subsection (j) as subsection (i).

(2) Section 206 of such Act (29 U.S.C.1056) is amended by striking subsection (e).

(c) 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. 305.Limitations on benefit improvements by single-employer plans which are underfunded or maintained by financially weak employers.".

(d) EFFECTIVE DATE.—

(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 the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

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

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

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

(B) January 1, 2009.

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

SEC. 314. 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 101(f)(2)(B), by striking clause (i) and inserting the following:

''(i) a statement as to whether the percentage which the amount determined under section 304(c)(6)(A)(ii) bears to the amount determined under section

304(c)(6)(C), is at least 100 percent (and, if not, the actual percentage);'';

(3) in section 103(d)(8)(B), by striking ''the requirements of section 302(c)(3)'' and inserting ''the applicable requirements of sections 303(h)(1) and 304(c)(3)'';

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

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

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

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

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

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

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

(7) in sections 101(e)(3), 403(c)(1), and 408(b)(13), by striking ''American Jobs Creation

Act of 2004'' and inserting ''National Employee Savings and Trust Equity Guarantee 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) (29 U.S.C. 1362(c)), by striking paragraphs (1), (2), and (3) and inserting the following:

''(1)(A) in the case of a single-employer plan, the sum of unpaid minimum required contributions

(within the meaning of section 4971(c)(4) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs and all preceding plan years (which, for purposes of this subparagraph, shall include any increase in such sum which would result 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) 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 302(d) of this Act or section 412(e) 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 amortization payments described in subparagraph (B) or (C) of section 303(a)(1) of this Act or subparagraph (B) or (C) of section 430(a)(1) of the Internal Revenue Code of 1986 which were determined for the plan year in which the termination date occurs or any preceding plan year, but are properly allocable to any succeeding plan year, 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 302(d) of this Act or section 431(e) 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)'' each place it appears 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(f)(2)'', by striking ''304(a) and (b)(2)(A)'' and inserting ''302(d) and (e)(1)(A)'', and by striking ''412(c)(8)'' and inserting ''412(g)(2) ''.

(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 December 31, 2006.

PART III—INTEREST RATE ASSUMPTIONS AND DEDUCTIBLE AMOUNTS FOR 2006

SEC. 321. EXTENSION OF REPLACEMENT OF 30-YEAR TREASURY RATES.

(a) 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''.

(b) 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".

(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. 322. 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. 323. 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.

Subtitle B—Related Provisions

SEC. 331. REPLACEMENT OF 30-YEAR TREASURY RATE FOR CALCULATING LUMP-SUM DISTRIBUTIONS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—Section 417(e)(3)(A) of the Internal Revenue Code of 1986 (relating to determination of present value) is amended—

(1) by striking ''and the applicable interest rate.'' in clause (i) and inserting ''and by using—

"(I) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, 2009, and 2010, and

"(II) the yield curve method for years beginning after 2010."; and

(2) by striking subclause (II) of clause (ii) and inserting:

"(II) YIELD CURVE METHOD.—The term 'yield curve method' has the meaning given such term by section 430(h)(2)(B).

"(III) PHASE-IN YIELD CURVE METHOD.—The term 'phase in yield curve method' has the meaning given the term by section 430(h)(2)(C), except that the annual rate of interest on 30-year Treasury securities shall be substituted for the interest rate under section 430(h)(2)(C)(i)(II) and the applicable percentage determined under subclause (IV) shall be substituted for the applicable percentage used under such section.

"(IV) APPLICABLE PERCENTAGE.—For purposes of subclause (III), the applicable percentage shall be determined in accordance with the following table:

In the case of years beginning in—	The applicable percentage is—
2007	20
2008	40
2009	60
2010	80.".

(b) AMENDMENTS OF ERISA.—Section 205(g)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)) is amended—

(1) by striking "and the applicable interest rate." in clause (i) and inserting "and by using—

"(I) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, 2009, and 2010, and

"(II) the yield curve method for years beginning after 2010."; and

(2) by striking subclause (II) of clause (ii) and inserting:

"(II) YIELD CURVE METHOD.—The term 'yield curve method' has the meaning given such term by section 303(h)(2)(B).

"(III) PHASE-IN YIELD CURVE METHOD.—The term 'phase in yield curve method' has the meaning given the term by section 303(h)(2)(C), except that the annual rate of interest on 30-year Treasury securities shall be substituted for the interest rate under section 303(h)(2)(C)(i)(II) and the applicable percentage determined under subclause (IV) shall be substituted for the applicable percentage used under such section.

"(IV) APPLICABLE PERCENTAGE.—For purposes of subclause (III), the applicable percentage shall be determined in accordance with the following table:

In the case of years beginning in—	The applicable percentage is—
2007	20
2008	40
2009	60
2010	80.".

(c) EFFECTIVE DATES.—

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

(2) SPECIAL RULE FOR CERTAIN OPTIONAL BENEFITS.—If—

(A) for the last plan year of a plan beginning in 2003, the plan provides that the applicable interest rate under section 417(e)(3) of the Internal Revenue Code of 1986 and section 205(g)(3) of Employee Retirement Income Security Act of 1974 shall be used for purposes of determining the amount of a benefit (other than the accrued benefit) to which such sections 417(e)(3) and 205(g)(3) do not apply, and

(B) such plan is amended to provide that a rate other than the applicable interest rate shall be used for such purposes and the first plan year for which such amendment is effective begins no later than January 1, 2007,

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 Employee Retirement Income Security Act of 1974 by reason of such amendment.

SEC. 332. 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. 333. 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:

"RESTRICTIONS ON FUNDING OF NONQUALIFIED DEFERRED COMPENSATION PLANS

"SEC. 306. (a) RESTRICTIONS.—During any restricted period—

"(1) a plan sponsor of a defined benefit plan which is a single-employer plan, and

"(2) any member of a controlled group which includes such sponsor,

may not directly or indirectly transfer assets, and may not directly or indirectly otherwise reserve assets, in a trust (or other arrangement determined by the Secretary of the Treasury) for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of such plan sponsor or member.

"(b) NOTICE AND ACCESS.—

"(1) NOTICE RELATING TO RESTRICTED PERIOD.—The plan administrator of a plan described in subsection (a)(1) 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 subsection (a) 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 subsection (a)(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 subsection (a) 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 subsection (a)(1) or a member of a controlled group which includes such sponsor—

"(i) transfers or reserves assets in violation of subsection (a), or

"(ii) establishes a new nonqualified deferred compensation plan,

the plan sponsor shall notify the plan administrator of the plan described in subsection (a)(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 this section.

"(c) RESTRICTED PERIOD.—For purposes of this section, the term 'restricted period' means, with respect to any plan described in subsection (a)(1)—

"(1) any prohibited period determined under subparagraph (A) or (B) of section 305(c)(3), except that in making such determination—

"(A) both subsection (c)(1) and (c)(3)(A) of section 305 shall be applied by substituting '80 percent' for '60 percent' each place it appears, and

"(B) section 305(c)(5) shall apply.

"(2) 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 sufficient for benefit liabilities (within the meaning of section 4041).

"(d) NONQUALIFIED DEFERRED COMPENSATION PLAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'nonqualified deferred compensation plan' means any plan that provides for the deferral of compensation, other than—

"(A) a qualified employer plan, and

"(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

"(2) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

"(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) of the Internal Revenue

1 Code of 1986 (without regard to subparagraph
2 (A)(iii)),
3 "(B) any eligible deferred compensation
4 plan (within the meaning of section 457(b) of
5 such Code), and
6 "(C) any plan described in section 415(m)
7 of such Code.
8 "(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
9 The term 'plan' includes any agreement or arrange-
10 ment, including an agreement or arrangement that
11 includes one person.
12 "(e) OTHER DEFINITIONS.—For purposes of this
13 section—
14 "(1) APPLICABLE COVERED EMPLOYEE.—
15 "(A) IN GENERAL.—The term 'applicable
16 covered employee' mean any—
17 "(i) covered employee of a plan spon-
18 sor,
19 "(ii) covered employee of a member of
20 a controlled group which includes the plan
21 sponsor, and
22 "(iii) former employee who was a cov-
23 ered employee at the time of termination of
24 employment with the plan sponsor or a

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(f)(3).".

(2) ENFORCEMENT.—

(A) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act (29 U.S.C. 1132(a)) is amended—

(i) 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 new paragraph:

"(10) 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 306 (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 (10), any term used in such paragraph which is also used in section 306 shall have the meaning given such term by section 306.".

(B) MANDATORY 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)(10) by a fiduciary for or on behalf of a plan to

enforce section 306, a judgement is awarded in favor of the plan, the court shall, 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.—If, 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,

directly or indirectly transfers assets, or directly or indirectly otherwise reserves assets, in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member, such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. For purposes of this paragraph, any term used in this paragraph which is also used in section 4980K(h) shall have the meaning given such term by such section.''.

(2) REQUIREMENT TO PROVIDE NOTICE OF EVENT RESULTING IN RESTRICTED PERIOD.—

(A) IN GENERAL.—Section 4980K of the Internal Revenue Code of 1986 (as amended by section 403) is amended—

(i) in subsection (a), by striking ''subsection (e), (f), or (g)'' and inserting ''subsection (e), (f), (g), or (h)'';

(ii) by amending subsection (b)(1) to read as follows:

"(1) AMOUNT OF TAX.—The amount of tax imposed by subsection (a) on any failure—

"(A) under subsection (e), (f), or (g) with respect to any participant or beneficiary shall be $100 for each day in the noncompliance period with respect to the failure; and

"(B) under subsection (h) shall be $1000 for each day in the noncompliance period with respect to the failure.";

(iii) in subsection (c)—

(I) by striking "subsection (e), (f), or (g)" each place it appears and inserting "subsection (e), (f), (g), or (h)"; and

(II) in paragraph (3)(C), by striking "(f) and (g)" and inserting "(f), (g), and (h)"; and

(iv) by adding at the end the following:

"(h) REQUIREMENT TO PROVIDE NOTICE OF EVENT RESULTING IN RESTRICTED PERIOD.—

"(1) IN GENERAL.—A plan administrator of a defined benefit plan which is a single-employer plan shall provide to 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 plan a notice that includes—

"(A) information as to the duration of the restricted period, and

"(B) the restrictions under section 306 of the Employee Retirement Income Security Act of 1974 and section 409A(b)(3) during the restricted period.

"(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—

"(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 306 of such Act or section 409A(b)(3) 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 defined benefit plan which is a single-employer plan or a member of a controlled group which includes such sponsor—

"(i) transfers or reserves assets in violation of section 306 of such Act or section 409A(b)(3), or

"(ii) establishes a new nonqualified deferred compensation plan,

the plan sponsor shall notify the plan administrator of the plan 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 306 of such Act or section 409A(b)(3).

"(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.

"(5) DEFINITIONS.—For purposes of this paragraph, any term used in this subsection which is also used in section 306 of such Act shall have the meaning given such term by such section.".

(3) 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. 334. SPECIAL FUNDING RULES FOR PLANS MAINTAINED BY COMMERCIAL AIRLINES THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.

(a) IN GENERAL.—If an eligible plan elects to have this section apply—

(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 sections 412 and 4971 of the Internal Revenue Code of 1986 and section 302 of the Employee Retirement Income Security Act of 1974 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 section 430 of such Code and 303 of such Act shall, for purposes of sections 412, 430, and 4971 of such Code and sections 302 and 303 of such Act, be equal to the minimum required contribution determined under subsection (d) for the plan for the plan year.

(b) ELIGIBLE PLAN.—For purposes of this section—

(1) IN GENERAL.—The term ''eligible plan'' means a defined benefit plan (other than a multiemployer plan) to which section 412 of such Code and 302 of such Act applies—

(A) which is sponsored by an employer which is a commercial passenger airline, and

(B) with respect to which the requirements of paragraphs (2) and (3) are met.

(2) ACCRUAL RESTRICTIONS.—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, the plan provides that—

(A) 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

(B) 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.

(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—The requirements of this paragraph are met if no applicable benefit increase (as defined in section 436(b)(3) of such Code and section 305(b)(3) of such Act, but determined without regard to subparagraph (B) or (C) thereof) 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.

(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. Such election, once made, may be revoked only with the consent of the 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 close of the amortization period, section 412(a)(2)(A) of such Code and section 302(a)(2)(A) of such Act shall apply to such plan, but the prefunding balance

as of the first day of the first plan year beginning after the close of the amortization period under section 430(e) of such Code and section 303(e) of such Act 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 14-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 412(c)(3) of such Code and section 302(c)(3) of such Act, as in effect before the date of enactment of this section, shall apply,

(B) the rate of interest under section 412(b)(5)(A) of such Code and section 302(b)(5)(A) of such Act, 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.

(e) FUNDING STANDARD ACCOUNT AND PREFUNDING BALANCE.—Any amortization bases or credit balances in the funding standard account under section 412 of such Code or section 302 of such Act, and any prefunding balance under section 430 of such Code or section 303 of such Act, 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) of the Internal Revenue Code of 1986, as amended by this Act, is amended by inserting after paragraph (33) the following new paragraph:

''(34) SUCCESSOR PLANS TO CERTAIN PLANS.—If a plan to which section 334 of the National Employee Savings and Trust Equity Guarantee Act of 2005 applies 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 em-

ployees, 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 section 334 of the National Employee Savings and Trust Equity Guarantee Act of 2005 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 section 334 of the National Employee Savings and Trust Equity Guarantee Act of 2005 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) 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.—If any plan makes an election under section 334 of the National Employee Savings and Trust Equity Guarantee Act of 2005, 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.''

(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iv) 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 not apply to any plan for a plan year if an election under section 334 of the National Employee Savings and Trust Equity Guarantee 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 4980F(e) of such Code or section 204(h) of such Act shall be subject to the timing rules applicable to multiemployer plans under Treasury Regulation section 54.4980F–1 Q/A–9 (or any successor provision). 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 one or more employers.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

SEC. 335. 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 target liability 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 of the Internal Revenue Code of 1986 or section 302 of such Act,

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

(B) Notwithstanding section 303(e)(3) of such Act or 430(e)(3) of such Code, for purposes of section 303(c)(2)(B) of such Act and 430(c)(2)(B) 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.

Subtitle C—Other Provisions

SEC. 341. TREATMENT OF CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PENSION PLANS.

(a) APPLICATION OF AGE DISCRIMINATION PROHIBITIONS.—

(1) 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 RULE 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 a qualified cash balance plan.".

(2) 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 RULE 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 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 benefits under the plan shall be equal to the av-

erage 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 a qualified cash balance plan.".

(b) RULES APPLICABLE TO ACCRUED BENEFITS UNDER CONVERTED PLANS.—

(1) 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)(A), 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.

"(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 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 paragraph (6)(B)(i)).''.

(2) 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 paragraph (1), 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.

"(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 of the Treasury which 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 re-

quired 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 (2)(A)) 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 subsection (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 subsection (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 paragraph (2)(A)).''.

(c) ASSUMPTIONS USED IN COMPUTING PRESENT VALUE OF ACCRUED BENEFIT.—

(1) 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 prescribed by the Secretary, in the case of a qualified cash balance plan (as defined in section 411(b)(5)(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 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 prescribed by the Secretary of the Treasury, in the case of a qualified cash balance plan (as defined in section 204(b)(5)(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 411(b)(1)(H) and 417(e) of the Internal Revenue Code of 1986 and 204(b)(1)(H) and 205(g)(3) of the Employee Retirement Income Security Act of 1974, 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 26, 2005.

(B) VESTING AND INTEREST CREDIT REQUIREMENTS.—In the case of a plan in existence on July 26, 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 26, 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 the earlier of—

(i) 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 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 26, 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. 342. 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:

1 "(x) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
2 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
3 FERRED ARRANGEMENTS.—
4 "(1) GENERAL RULE.—Except as provided in
5 this subsection, the requirements of this title shall
6 be applied to any defined benefit plan or applicable
7 defined contribution plan which are part of an eligi-
8 ble combined plan in the same manner as if each
9 such plan were not a part of the eligible combined
10 plan.
11 "(2) ELIGIBLE COMBINED PLAN.—For pur-
12 poses of this subsection—
13 "(A) IN GENERAL.—The term 'eligible
14 combined plan' means a plan—
15 "(i) which consists of a defined ben-
16 efit plan and an applicable defined con-
17 tribution plan,
18 "(ii) the assets of which are held in a
19 single trust forming part of the plan and
20 are clearly identified and allocated to the
21 defined benefit plan and the applicable de-
22 fined contribution plan to the extent nec-
23 essary for the separate application of this
24 title under paragraph (1), and

"(iii) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

"(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 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 contribution 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 clasue 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 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,

"(ii) 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

"(iii) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

1 "(B) BENEFIT REQUIREMENTS.—

2 "(i) IN GENERAL.—The benefit re-
3 quirements of this subparagraph are met
4 with respect to the defined benefit plan
5 forming part of the eligible combined plan
6 if the accrued benefit of each participant
7 derived from employer contributions, when
8 expressed as an annual retirement benefit,
9 is not less than the applicable percentage
10 of the participant's final average pay. For
11 purposes of this clause, final average pay
12 shall be determined using the period of
13 consecutive years (not exceeding 5) during
14 which the participant had the greatest ag-
15 gregate compensation from the employer.

16 "(ii) APPLICABLE PERCENTAGE.—For
17 purposes of clause (i), the applicable per-
18 centage is the lesser of—

19 "(I) 1 percent multiplied by the
20 number of years of service with the
21 employer, or

22 "(II) 20 percent.

23 "(iii) SPECIAL RULE FOR CASH BAL-
24 ANCE PLANS.—If the defined benefit plan
25 under clause (i) is a qualified cash balance

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 clasue 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 ar-

rangement 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:

"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, 2006.

Subtitle D—Studies

SEC. 351. JOINT STUDY ON REVITALIZING DEFINED BENEFIT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of the Treasury, the Secretary of Labor, and the Executive Director of the Pension Benefit Guaranty Corporation shall jointly undertake a study on ways to revitalize interest in defined benefit plans among employers. In conducting such study, the Secretaries and the Executive Director shall consider—

(1) ways to encourage the establishment of defined benefit plans by small- and mid-sized employers,

(2) ways to encourage the continued maintenance of defined benefit plans by larger employers, and

(3) legislative proposals to accomplish the objectives described in paragraphs (1) and (2).

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretaries and the Executive Director shall report the results of the study, together with any recommendations for legislative changes,

to the Committees on Ways and Means and Education and the Workforce of the House of Representatives and the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.

SEC. 352. STUDY ON FLOOR-OFFSET ESOPS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of the Treasury and the Pension Benefit Guaranty Corporation shall undertake a study to determine the number of floor-offset employee stock ownership plans still in existence and the extent to which such plans pose a risk to plan participants or beneficiaries and to the Corporation. Such study shall consider legislative proposals to address such risks.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary and the Corporation shall report the results of the study, together with any recommendations for legislative changes, to the Committees on Ways and Means and Education and the Workforce of the House of Representatives and the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.

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

SEC. 401. ACTUARIAL REPORTS AND SUMMARY ANNUAL REPORTS.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) ACTUARIAL REPORT.—Section 6059(b) of the Internal Revenue Code of 1986 (relating to actuarial reports), as amended by this Act, is amended by—

(A) redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(B) inserting after paragraph (3) the following:

''(4) in the case of a single-employer plan, as of the valuation date to which the report relates—

''(A) the fair market value of the plan assets;

''(B) the target liability and the target normal cost, as determined under section 430; and

''(C) the at risk-liability amount and the at-risk normal cost (determined as if section

430(f) applied to the plan and the plan sponsor were a financially-weak employer for the plan year and the 4 immediately preceding plan years);''.

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

''SEC. 4980K. FAILURE OF CERTAIN PENSION PLANS TO PROVIDE REQUIRED NOTICES.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of a defined benefit plan which is a single-employer plan to meet the requirements of subsection (e).

''(b) AMOUNT OF TAX.—

''(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any person required to receive a notice shall be $100 for each day in the noncompliance period with respect to the failure.

''(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending

on the date the statement to which the failure relates is provided or the failure is otherwise corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED AND REASONABLE DILIGENCE EXERCISED.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

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

"(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed $500,000.

"(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

"(d) LIABILITY FOR TAX.—The employer shall be liable for the tax imposed by subsection (a).

"(e) REQUIREMENT TO PROVIDE SUMMARY ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than the date prescribed by the Secretary, the administrator of a defined benefit plan which is a single-employer plan shall furnish a summary annual report described in paragraph (2).

"(2) CONTENT OF STATEMENT.—A summary annual report furnished under paragraph (1) shall include the following information:

"(A) A statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end the previous fiscal year of the plan.

"(B) A statement of the receipts and disbursements during the preceding 12-month period aggregated by general sources and applications.

"(C) A statement of the funded target liability percentage, as defined in section 436(e), of the plan for such fiscal year and for the 2 preceding fiscal years.

"(D) A statement of whether or not the plan sponsor was a financially-weak employer

(as determined under section 430(f)) during each of the fiscal years described in subparagraph (C).

"(E) The limits on the guarantee of the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974 if the plan is terminated while underfunded.

"(F) Such other material (including the percentage determined under section 103(d)(11) of the Employee Retirement Income Security Act of 1974) as is necessary to fairly summarize the latest return under section 6058.

"(3) FORM AND MANNER.—The Secretary of Labor may prescribe the form and manner of the summary annual report under this subsection and any additional information required to be included in such report. Such 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.".

(3) AGGREGATION.—Section 414(t) of such Code, as amended by this Act, is amended by strik-

ing "4980I, or 4980J" and inserting "4980I, 4980J, or 4980K".

(4) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code, as amended by this Act, is amended by adding at the end the following new item:

"Sec. 4980K. Failure of certain pension plans to provide required notices.".

(b) AMENDMENTS OF ERISA.—

(1) ACTUARIAL STATEMENT.—

(A) ADDITIONAL INFORMATION REQUIRED.—Section 103(d)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(d)(3)) is amended to read as follows:

"(3) The following information applicable to the plan year in which the report is filed:

"(A) An identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 302.

"(B) In the case of a multiemployer plan, the normal costs and the accrued liabilities of the plan.

"(C) In the case of a single-employer plan, the following information as of the valuation date for the plan year to which the report relates:

"(i) The fair market value of the plan assets.

"(ii) The target liability and the target normal cost, as determined under section 303.

"(iii) The at risk-liability and the at-risk normal cost (determined as if section 303(f) applied to the plan and the plan sponsor were a financially-weak employer for the plan year and the 4 immediately preceding plan years).

"(iv) Any other information as prescribed by the Secretary.".

(B) TIME FOR FILING ACTUARIAL STATEMENT.—Section 103 of such Act (29 U.S.C. 1023) is amended by adding at the end the following:

"(f) SUBMISSION DATE OF ACTUARIAL STATEMENT.—In the case of a plan that is subject to section 303(j), the actuarial statement described under subsection

(d) shall be submitted to the Secretary not later than the date that is the fifteenth day of the second month following the close of the applicable plan year. If a contribution is made to such a plan after the submission of such actuarial statement but before the submission of the annual report under section 104(a), the plan shall submit an amended actuarial statement with such annual report.''.

(2) SUMMARY ANNUAL REPORT TO PLAN PARTICIPANTS.—

(A) IN GENERAL.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended to read as follows:

''(3) SUMMARY ANNUAL REPORT.—Within 15 days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan, the plan administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the following information:

''(A) GENERAL INFORMATION.—The statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material (including the percentage deter-

mined under section 103(d)(11)) as is necessary to fairly summarize the latest annual report.

"(B) ADDITIONAL INFORMATION FOR SINGLE-EMPLOYER PLANS.—In the case of a defined benefit plan that is a single-employer plan—

"(i) a statement of the funded target liability percentage, as defined in section 305(e), of the plan for such fiscal year and for the 2 preceding fiscal years;

"(ii) a statement of whether or not the plan sponsor was a financially-weak employer (as determined under section 303(f)) during each of the fiscal years described in clause (i);

"(iii) the limits on the guarantee of the Pension Benefit Guaranty Corporation under title IV if the plan is terminated while underfunded.

"(C) FORM AND MANNER OF REPORT.—The Secretary may prescribe the form and manner of the summary annual report under this subsection and any additional information required to be included in such report. Such notice shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, elec-

tronic, or other appropriate form to the extent that such form is reasonably accessible to the recipient.''.

(B) PENALTY.—Section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(7)), as amended by this Act, is amended by striking ''or section 104(d)'' and inserting ''or subsection (b)(3) or (d) of section 104''.

(c) REPEAL OF PROVISIONS.—

(1) FREEDOM OF INFORMATION ACT EXEMPTION.—Subsection (c) of section 4010 of the Employee Retirement Income Security Act (29 U.S.C. 1310(c)) is repealed.

(2) NOTICE TO PARTICIPANTS.—Section 4011 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1311) is repealed.

(3) CONFORMING AMENDMENT.—The table of sections for title IV of the Employee Retirement Income Security Act of 1974 is amended by striking the item relating to section 4011.

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

SEC. 402. NOTICE OF FUNDING BENEFIT LIMITATIONS AND RESTRICTIONS ON BENEFIT INCREASES.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) EXCISE TAX.—Section 4980K of the Internal Revenue Code, as added by section 401, is amended—

(A) in subsection (a), by striking ''subsection (e)'' and inserting ''subsection (e) or (f)'';

(B) in subsection (c)—

(i) by striking ''subsection (e)'' each place it appears and inserting ''subsection (e) or (f)''; and

(ii) in paragraph (3), by adding at the end the following:

''(C) SEPARATE APPLICATION.—This paragraph shall be applied separately for failures to meet the requirements of subsections (e) and (f).''; and

(C) by adding at the end the following:

''(f) REQUIREMENT TO PROVIDE NOTICE ON BENEFIT LIMITATIONS.—

''(1) IN GENERAL.—The plan administrator of a pension plan that becomes subject to any benefit limitation or restriction under section 436 shall provide—

"(A) a written notice to plan participants and beneficiaries of the limitation or restriction within a reasonable time before it takes effect; and

"(B) a written notice of the date on which the limitation or restriction ceases to apply within a reasonable time before such date.

"(2) CHANGE IN TIME OF NOTICE.—The Secretary may prescribe that a notice under paragraph (1) may be given within a reasonable period of time after the effective date or date of cessation of any benefit limitation or restriction if providing such notice before such date is not practicable due to events that were unforeseeable or circumstances beyond the control of the plan administrator.

"(3) FORM AND MANNER OF NOTICE.—The Secretary may prescribe the form and manner of the notice under this subsection. Such 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) AMENDMENTS OF ERISA.—

(1) 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—

(A) redesignating subsection (l) as subsection (m); and

(B) inserting after subsection (k) the following:

''(l) NOTICE OF FUNDING BENEFIT LIMITATIONS AND RESTRICTIONS ON BENEFIT INCREASES.—

''(1) IN GENERAL.—The plan administrator of a single-employer plan that becomes subject to any benefit limitation or restriction under section 305 shall provide—

''(A) a written notice to plan participants and beneficiaries of the limitation or restriction within a reasonable time before it takes effect; and

''(B) a written notice of the date on which the limitation or restriction ceases to apply within a reasonable time before such date.

''(2) CHANGE IN TIME OF NOTICE.—The Secretary of Treasury may prescribe that a notice under paragraph (1) may be given within a reasonable period of time after the effective date or date of cessation of any benefit limitation or restriction if pro-

viding such notice before such date is not practicable due to events that were unforeseeable or circumstances beyond the control of the plan administrator.

"(3) FORM AND MANNER OF NOTICE.—The Secretary of Treasury may prescribe the form and manner of the notice under this subsection. Such 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.".

(2) PENALTY.—Section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(7)), as amended by this Act, is amended by striking "subsection (i) or (j)" and inserting "subsection (i), (j), or (l)".

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

SEC. 403. NOTICE OF BANKRUPTCY FILING.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 4980K of the Internal Revenue Code, as amended by section 402, is amended—

(A) in subsection (a), by striking ''subsection (e) or (f)'' and inserting ''subsection (e), (f), or (g)'';

(B) in subsection (c)—

(i) by striking ''subsection (e) or (f)'' each place it appears and inserting ''subsection (e), (f), or (g)''; and

(ii) in paragraph (3)(C), by striking ''(e) and (f)'' and inserting ''(e), (f), and (g)''; and

(C) by adding at the end the following:

''(g) REQUIREMENT TO NOTICE OF BANKRUPTCY FILING.—

''(1) NOTICE TO PLAN ADMINISTRATOR.—A contributing sponsor of a defined benefit plan which is a single-employer plan shall provide a written notice to the plan administrator when such sponsor files (or within a reasonable time after such sponsor has had filed against such sponsor) 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 of a State.

''(2) NOTICE TO PARTICIPANTS.—The plan administrator of a plan described in paragraph (1)

shall, within a reasonable time after such administrator receives a notice provided under paragraph (1) or otherwise has reason to know that the plan sponsor has filed (or has had filed against the sponsor) a petition described under paragraph (1), provide to participants and beneficiaries of the plan a written notice of—

"(A) the filing of such petition; and

"(B) the limits on the guarantee of the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974 if the plan is terminated while underfunded, taking into account the filing of such petition.

"(3) FORM AND MANNER.—The Secretary of Labor may prescribe the form and manner of the notice under this subsection. Such 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) AMENDMENT OF ERISA.—

(1) 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—

(A) redesignating subsection (m) as subsection (n); and

(B) inserting after subsection (l) the following:

''(m) NOTICE OF BANKRUPTCY FILING.—

''(1) NOTICE TO PLAN ADMINISTRATOR.—A contributing sponsor of a defined benefit plan that is a single-employer plan shall provide a written notice to the plan administrator when such sponsor files (or within a reasonable time after such sponsor has had filed against such sponsor) 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 of a State.

''(2) NOTICE TO PARTICIPANTS.—The plan administrator of a defined benefit plan that is a single-employer plan shall, within a reasonable time after such administrator receives a notice provided under paragraph (1) or otherwise has reason to know that the plan sponsor has filed (or has had filed against the sponsor) a petition described under paragraph

(1), provide to participants and beneficiaries of the plan a written notice of—

"(A) the filing of such petition; and

"(B) the limits on the guarantee of the Pension Benefit Guaranty Corporation under title IV if the plan is terminated while underfunded, taking into account the filing of such petition.

"(3) FORM AND MANNER OF NOTICE.—The Secretary may prescribe the form and manner of the notice under this subsection. Such 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.".

(2) PENALTY.—Section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(7)), as amended by this Act, is amended by striking "(j), or (l)" and inserting "(j), (l), or (m)".

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

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

SEC. 501. 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) 130 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. 502. MULTIEMPLOYER DEFINED BENEFIT PLAN FUNDING NOTICES.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—

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

"SEC. 4980L. FAILURE OF MULTIEMPLOYER DEFINED BENEFIT PLANS TO PROVIDE FUNDING NOTICE.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of a multiemployer defined benefit plan to meet the requirements of subsection (e) with respect to any participant or beneficiary, labor organization representing such participants or beneficiaries, employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation.

''(b) AMOUNT OF TAX.—

''(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any recipient described under subsection (a) shall be $100 for each day in the noncompliance period with respect to the failure.

''(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending

on the date the statement to which the failure relates is provided or the failure is otherwise corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED AND REASONABLE DILIGENCE EXERCISED.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

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

"(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of the plan shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

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

"(d) LIABILITY FOR TAX.—The plan shall be liable for the tax imposed by subsection (a).

"(e) PLAN FUNDING NOTICE.—

"(1) IN GENERAL.—The administrator of a defined benefit plan which is a multiemployer plan shall for each plan year provide a plan funding notice to each affected party and the Pension Benefit Guaranty Corporation.

"(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) a statement as to whether the percentage which the amount determined under section 431(c)(6)(A)(ii) bears to the amount determined under section 431(c)6)(C) is at least 100 percent (and, if not, the actual percentage);

"(ii) a statement of the value of the plan's assets, the amount of benefit payments, and the ratio of the assets to the payments for the plan year to which the notice relates;

"(iii) a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments

and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and

"(iv) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974, 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 any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary of Labor.

"(3) TIME FOR PROVIDING NOTICE.—Any notice under paragraph (1) shall be provided not later than 2 months after the deadline (including extensions) for filing the return described under section 6058 for the plan year to which the notice relates.

"(4) FORM AND MANNER.—Any notice under paragraph (1)—

"(A) shall be provided in a form and manner prescribed in regulations of the Secretary of Labor,

"(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 the recipient.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code, as amended by this Act, is amended by adding at the end the following new item:

"Sec. 4980L. Failure of multiemployer defined benefit plans to provide funding notice.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

SEC. 503. 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) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers made in taxable years beginning after December 31, 2004.

SEC. 504. ADMINISTRATIVE PROVISIONS.

(a) AUTHORITY OF THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall have the authority to prescribe rules applicable to the statements required under section 4980K(f) of the Internal Revenue Code of 1986 (as added by this Act) and section 101(l) of the Employee Retirement Income Security Act of 1974 (as added by this Act).

(b) AUTHORITY OF THE SECRETARY OF LABOR.—The Secretary of Labor shall have the authority to prescribe rules applicable to the statements required under—

(1) section 4980K(g) of the Internal Revenue Code of 1986 (as added by this Act) and section 101(m) of the Employee Retirement Income Security Act of 1974 (as added by this Act); and

(2) section 4980L of such Code (as added by this Act).

TITLE VI—PBGC PREMIUM AND GUARANTEE PROVISIONS

SEC. 601. INCREASES IN PBGC PREMIUMS FOR SINGLE-EMPLOYER PLANS.

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

(1) in subparagraph (A)(i), by inserting ''(or for plan years beginning after December 31, 2005, the amount determined under subparagraph (F))'' after ''$19''; and

(2) by adding at the end the following:

''(F) AMOUNT OF FLAT-RATE 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) YEARS BEFORE NEW FUNDING RULES TAKE EFFECT.—Section 4006(a)(3)(E) of the Employee Retirement Income Security Act (29 U.S.C. 1306(a)(3)(E)) is amended—

(A) in clause (ii), by striking "unfunded vested benefits" and inserting "unfunded current liability "; and

(B) in clause (iii)—

(i) by striking subclause (I) and inserting:

"(I) Except as provided in subclause (II) or (III), the term 'unfunded current liability' has the meaning given such term by section 302(d)(8)(A).", and

(ii) by striking ''vested'' before ''benefits'' in subclause (II).

(2) YEARS TO WHICH NEW FUNDING RULES APPLY.—Section 4006(a)(3)(E) of the Employee Retirement Income Security Act (29 U.S.C. 1306(a)(3)(E)) is amended—

(A) in clause (ii), by striking ''unfunded current liability'' and inserting ''unfunded target liability (as determined under section 303)''; and

(B) by striking clauses (iii) and (iv).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (b)(1) shall apply to plan years beginning after December 31, 2005.

(2) NEW RULES.—The amendments made by subsection (b)(2) shall apply to plan years beginning after December 31, 2006.

SEC. 602. 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 date of plan termination.".

(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. 603. 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 an event that occurs after July 26, 2005.

SEC. 604. 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)), as amended by this Act, is amended—

(1) in clause (i), by inserting ''other than a new single-employer plan (as defined in subparagraph (G)) 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:

''(iv) in the case of a new single-employer plan (as defined in subparagraph (G)) 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 amended by adding at the end the following new subparagraph:

''(G)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any

member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

''(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

''(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing 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. 605. 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)(E)), as amended by this Act, is amended by adding at the end the following new clause:

"(iii) 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 and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan."

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by this Act, is amended—

(1) by striking ''The'' in subparagraph (E)(i) and inserting ''Except as provided in subparagraph (H), the'', and

(2) by inserting after subparagraph (G) the following new subparagraph:

''(H)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

''(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined by taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing 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. 606. 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. 607. 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.

''(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 original

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.

"(C) For purposes of this paragraph, 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) 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)(1) 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—

"(A) owns the entire interest in an unincorporated trade or business,

"(B) 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

"(C) 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.

"(2) For purposes of this subsection, 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. 608. 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 pre-

ceding 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 connection 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 termi-

nation 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.

TITLE VII—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

SEC. 701. JOINT STUDY OF APPLICATION OF SPOUSAL CONSENT RULES TO DEFINED CONTRIBUTION PLANS.

(a) STUDY.—The Secretary of Labor and the Secretary of the Treasury shall jointly conduct a study of the feasibility and desirability of extending the application of the requirements of section 205 of the Employee Retirement Income Security Act of 1974 and sections 401(a)(11) and 417 of the Internal Revenue Code of 1986 (relating to spousal consent requirements) to defined contribution plans to which such requirements do not apply. Such study shall include consideration of—

(1) any modifications of such requirements that are necessary to apply such requirements to such plans, and

(2) the feasibility of providing notice and spousal consent in 1 or more electronic forms that are capable of authentication.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretaries shall report the results of the study, together with any recommendations for legislative changes, to the Committees on Ways and Means and Education and the Workforce of the House of Representatives and the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.

SEC. 702. 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. 703. 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. 704. 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. 705. 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 optional 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 VIII—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

SEC. 801. 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 increased 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 (with-

out 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. 802. 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. 803. 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 section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).

SEC. 804. 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. 805. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

"(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

"(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

"(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

"(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section

408(d)(3)(C)) for purposes of this title, and

"(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

"(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a 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. 806. 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:

"(2)(A)(i) 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) 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) 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)(i) In the case of an individual account plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

"(ii) 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) 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 paragraph (2), 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.

SEC. 807. 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. 808. 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 804, 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 National Employee Savings and Trust Equity Guarantee 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. 809. 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. 810. 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. 811. 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 Cor-

poration pursuant to clause (i) shall be treated as a transfer to an individual 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 812, 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

1 beneficiary the amount transferred (or the appro-
2 priate survivor benefit) either—
3 "(A) in a single sum (plus interest), or
4 "(B) in such other form as is specified in
5 regulations of the corporation.
6 "(2) INFORMATION TO THE CORPORATION.—To
7 the extent provided in regulations, the plan adminis-
8 trator of a plan described in paragraph (3) shall,
9 upon a transfer of benefits to the corporation under
10 section 401(a)(31)(B) of such Code, provide the cor-
11 poration information with respect to benefits of the
12 participant or beneficiary so transferred.
13 "(3) PLANS DESCRIBED.—A plan is described
14 in this paragraph if the plan is a pension plan (with-
15 in the meaning of section 3(2))—
16 "(A) which provides for mandatory dis-
17 tributions under section 401(a)(31)(B) of the
18 Internal Revenue Code of 1986, and
19 "(B) which is not a plan described in para-
20 graphs (2) through (11) of section 4021(b).
21 "(4) CERTAIN PROVISIONS NOT TO APPLY.—
22 Subsections (a)(1) and (a)(3) shall not apply to a
23 plan described in paragraph (3).
24 "(f) AUTHORITY TO CHARGE FEE.—The corporation
25 may charge a reasonable fee for costs incurred in connec-

tion 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. 812. 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.

TITLE IX—ADMINISTRATIVE PROVISIONS

SEC. 901. 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. 902. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—The following provisions are each amended by striking ''maintained by a State or local gov-

ernment or political subdivision thereof (or agency or instrumentality thereof)'':

(1) Section 401(a)(5)(G) of the Internal Revenue Code of 1986.

(2) Section 401(a)(26)(H) of such Code.

(3) Section 401(k)(3)(G) of such Code.

(4) Section 1505(d)(2) of the Taxpayer Relief Act of 1997.

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 401(a)(5)(G) of such Code is amended to read as follows: ''GOVERNMENTAL PLANS.—''.

(2) The heading for section 401(a)(26)(H) of such Code is amended to read as follows: ''EXCEPTION FOR GOVERNMENTAL PLANS.—''.

(3) Section 401(k)(3)(G) of such Code is amended by inserting ''GOVERNMENTAL PLANS.—'' after ''(G)''.

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

SEC. 903. 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 adminis-

trator makes a reasonable attempt to comply with such requirements.

SEC. 904. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury and the Secretary of Labor 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, in consultation with 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. 905. 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 welfare 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. 906. 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. 907. 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 De-

cember 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. 908. CLARIFICATION OF TREATMENT OF DEFINED BENEFIT PLANS OF INDIAN TRIBAL GOVERNMENTS.

(a) DEFINITION OF GOVERNMENTAL PLAN.—

(1) 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 defined benefit 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 or instrumentality (or subdivi-

sion) 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.''.

(2) 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 defined benefit plan established or 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 (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.''.

(b) CLARIFICATION THAT TRIBAL GOVERNMENTS ARE SUBJECT TO THE SAME PLAN RULES AND REGULATIONS APPLIED TO STATE AND OTHER LOCAL GOVERNMENTS AND THEIR POLICE AND FIREFIGHTERS.—

(1) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(A) POLICE AND FIREFIGHTERS.—Subparagraph (H) of section 415(b)(2) of such Code (defining participant) is amended—

(i) 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

(ii) 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 thereof''.

(B) STATE AND LOCAL GOVERNMENT PLANS.—

(i) 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''.

(ii) CONFORMING AMENDMENT.—The heading of paragraph (10) 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''.

(C) GOVERNMENT PICKUP CONTRIBUTIONS.—Paragraph (2) of section 414(h) of such Code (relating to designation by units of government) is amended by adding at the end the following new sentence: ''This paragraph shall also apply to any defined benefit plan maintained by any Indian tribal government (as defined in section 7701(a)(40)) or political subdivision thereof, or an agency or instrumentality of either'' .

(2) 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—

(A) in paragraph (12), by striking ''or'' at the end;

(B) in paragraph (13), by striking ''plan.'' and inserting ''plan; or''; and

(C) by adding at the end the following:

''(14) which is a defined benefit plan 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.''.

(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. 909. 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. 910. 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 Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any 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.

TITLE X—UNITED STATES TAX COURT MODERNIZATION

SEC. 1000. 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.

Subtitle A—Tax Court Pension and Compensation

SEC. 1001. 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 assassination, 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. 1002. 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. 1003. 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. 1004. 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. 1005. 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. 1006. 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 exceed 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. 1007. 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. 1008. 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. 1009. 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. 1010. 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 Is-

lands, 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 receives 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 re-

1 ceived, for credit to the Tax Court Judicial Officers' Re-
2 tirement Fund.

3 "(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

4 "(1) 1-YEAR FORFEITURE FOR FAILURE TO
5 PERFORM JUDICIAL DUTIES.—Subject to paragraph
6 (3), any magistrate judge of the Tax Court who re-
7 tires under this section and who fails to perform ju-
8 dicial duties required of such individual by section
9 7443C shall forfeit all rights to an annuity under
10 this section for a 1-year period which begins on the
11 1st day on which such individual fails to perform
12 such duties.

13 "(2) PERMANENT FORFEITURE OF RETIRED
14 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES
15 PERFORMED.—Subject to paragraph (3), any mag-
16 istrate judge of the Tax Court who retires under this
17 section and who thereafter performs (or supervises
18 or directs the performance of) legal or accounting
19 services in the field of Federal taxation for the indi-
20 vidual's client, the individual's employer, or any of
21 such employer's clients, shall forfeit all rights to an
22 annuity under this section for all periods beginning
23 on or after the first day on which the individual per-
24 forms (or supervises or directs the performance of)
25 such services. The preceding sentence shall not apply

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 an-

nuity 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 mag-

1 istrate judge of the Tax Court are notified
2 of the magistrate judge's application, and
3 "(ii) shall be subject to the terms of
4 a court decree of divorce, annulment, or
5 legal separation, or any court or court ap-
6 proved property settlement agreement inci-
7 dent to such decree, if—
8 "(I) the decree, order, or agree-
9 ment expressly relates to any portion
10 of the lump-sum credit or other pay-
11 ment involved, and
12 "(II) payment of the lump-sum
13 credit or other payment would extin-
14 guish entitlement of the magistrate
15 judge's spouse or former spouse to
16 any portion of an annuity under sub-
17 section (i).
18 "(B) NOTIFICATION.—Notification of a
19 spouse or former spouse under this paragraph
20 shall be made in accordance with such proce-
21 dures as the chief judge of the Tax Court shall
22 prescribe. The chief judge may provide under
23 such procedures that subparagraph (A)(i) may
24 be waived with respect to a spouse or former
25 spouse if the magistrate judge establishes to the

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 procedures 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 National Employee Savings and Trust Equity Guarantee 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 National Employee Savings and Trust Equity Guarantee 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 National Employee Savings and Trust Equity Guarantee 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 National Employee Savings and Trust Equity Guarantee 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 National Employee Savings and Trust Equity Guarantee 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. 1011. 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 files a notice of that election with the chief judge of the United States Tax Court specifying the date on which service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) LUMP-SUM CREDIT UNDER TITLE 5.—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that

election, and with respect to which any contributions were made by the magistrate judge under the applicable provisions of title 5, United States Code.

(d) RECALL.—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act—

(1) the amount of compensation which such recalled 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. 1012. 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 specified 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. 1013. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Procedure

SEC. 1021. JURISDICTION OF TAX COURT OVER COLLECTION DUE PROCESS CASES.

(a) IN GENERAL.—Paragraph (1) of section 6330(d) (relating to proceeding after hearing) is amended to read as follows:

"(1) JUDICIAL REVIEW OF DETERMINATION.—The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to determinations made after the date which is 60 days after the date of the enactment of this Act.

SEC. 1022. AUTHORITY FOR MAGISTRATE JUDGES TO HEAR AND DECIDE CERTAIN EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating to proceedings which may be assigned to magistrate judges) is amended by striking "and" at the end of paragraph (4), by redesignating paragraph (5) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) any proceeding under section 7436(c), and".

(b) CONFORMING AMENDMENT.—Section 7443A(c) is amended by striking ''or (4)'' and inserting ''(4), or (5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any proceeding under section 7436(c) of the Internal Revenue Code of 1986 with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

SEC. 1023. CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.

(a) CONFIRMATION OF AUTHORITY OF TAX COURT TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—Section 6214(b) (relating to jurisdiction over other years and quarters) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, the Tax Court may apply the doctrine of equitable recoupment to the same extent that it is available in civil tax cases before the district courts of the United States and the United States Court of Federal Claims.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any action or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481

of the Internal Revenue Code of 1986) as of the date of the enactment of this Act.

SEC. 1024. TAX COURT FILING FEE IN ALL CASES COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee for filing a Tax Court petition) is amended by striking all that follows ''petition'' and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 1025. AMENDMENTS TO APPOINT EMPLOYEES.

(a) IN GENERAL.—Subsection (a) of section 7471 (relating to Tax Court employees) is amended to read as follows:

''(a) APPOINTMENT AND COMPENSATION.—

''(1) CLERK.—The Tax Court may appoint a clerk without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The clerk shall serve at the pleasure of the Tax Court.

''(2) LAW CLERKS AND SECRETARIES.—

''(A) IN GENERAL.—The judges and special trial judges of the Tax Court may appoint law clerks and secretaries, in such numbers as the Tax Court may approve, without regard to

the provisions of title 5, United States Code, governing appointments in the competitive service. Any such law clerk or secretary shall serve at the pleasure of the appointing judge.

"(B) EXEMPTION FROM FEDERAL LEAVE PROVISIONS.—A law clerk appointed under this subsection shall be exempt from the provisions of subchapter I of chapter 63 of title 5, United States Code. Any unused sick leave or annual leave standing to the employee's credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government.

"(3) OTHER EMPLOYEES.—The Tax Court may appoint necessary employees without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such employees shall be subject to removal by the Tax Court.

"(4) PAY.—The Tax Court may fix and adjust the compensation for the clerk and other employees of the Tax Court without regard to the provisions of chapter 51, subchapter III of chapter 53, or section 5373 of title 5, United States Code. To the max-

imum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

"(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

"(6) DISCRIMINATION PROHIBITED.—The Tax Court shall—

"(A) prohibit discrimination on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status, or handicapping condition; and

"(B) promulgate procedures for resolving complaints of discrimination by employees and applicants for employment.

"(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

"(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this

subsection and who, as of that day, was entitled to—

"(A) appeal a reduction in grade or removal to the Merit Systems Protection Board under chapter 43 of title 5, United States Code,

"(B) appeal an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

"(C) appeal a prohibited personnel practice described under section 2302(b) of title 5, United States Code, to the Merit Systems Protection Board under chapter 77 of that title,

"(D) make an allegation of a prohibited personnel practice described under section 2302(b) of title 5, United States Code, with the Office of Special Counsel under chapter 12 of that title for action in accordance with that chapter, or

"(E) file an appeal with the Equal Employment Opportunity Commission under part 1614 of title 29 of the Code of Federal Regulations,

shall be entitled to file such appeal or make such an allegation so long as the individual remains an employee of the Tax Court.

"(9) COMPETITIVE STATUS.—Notwithstanding any other provision of law, any employee of the Tax Court who has completed at least 1 year of continuous service under a non-temporary appointment with the Tax Court acquires a competitive status for appointment to any position in the competitive service for which the employee possesses the required qualifications.

"(10) MERIT SYSTEM PRINCIPLES; PROHIBITED PERSONNEL PRACTICES; AND PREFERENCE ELIGIBLES.—Any personnel management system of the Tax Court shall—

"(A) include the principles set forth in section 2301(b) of title 5, United States Code;

"(B) prohibit personnel practices prohibited under section 2302(b) of title 5, United States Code; and

"(C) in the case of any individual who would be a preference eligible in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the United States

Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 1026. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7475(b) (relating to use of fees) is amended by inserting before the period at the end ''and to provide services to pro se taxpayers''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE XI—OTHER PROVISIONS

SEC. 1101. 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 1101(a) of the National Employee Savings and Trust Equity Guarantee Act of 2005. The Secretary 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. 1102. 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 sec-

tion 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 covered lives shall be treated as a new contract only with respect to such additional covered lives.

Calendar No. 276

109TH CONGRESS
1ST SESSION

S. 1953

[Report No. 109–174]

A BILL

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

NOVEMBER 2, 2005

Read twice and placed on the calendar