

AMENDMENT NO. _____ Calendar No. _____

Purpose: To modify the pension funding provisions.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. 4213

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ISAKSON (for himself and Mr. CARDIN) to the amendment (No. 3336) proposed by Mr. BAUCUS

Viz:

1 Strike title III and insert the following:

2 **TITLE III—PENSION FUNDING**

3 **RELIEF**

4 **Subtitle A—Single Employer Plans**

5 **SEC. 301. EXTENDED PERIOD FOR SINGLE-EMPLOYER DE-**

6 **FINED BENEFIT PLANS TO AMORTIZE CER-**

7 **TAIN SHORTFALL AMORTIZATION BASES.**

8 (a) AMENDMENTS TO ERISA.—

1 determined under the applicable
2 clause for that year for that base.

3 “(ii) 2 PLUS 7 AMORTIZATION SCHED-
4 ULE.—The shortfall amortization install-
5 ments determined under this clause are—

6 “ (I) in the case of the first 2
7 plan years in the 9-plan-year period
8 beginning with the election year, in-
9 terest on the shortfall amortization
10 base of the plan for the election year
11 (determined using the effective inter-
12 est rate for the plan for the election
13 year), and

14 “(II) in the case of the last 7
15 plan years in such 9-plan-year period,
16 the amounts necessary to amortize the
17 remaining balance of the shortfall am-
18 ortization base of the plan for the
19 election year in level annual install-
20 ments over such last 7 plan years
21 (using the segment rates under sub-
22 paragraph (C) for the election year).

23 “(iii) 15-YEAR AMORTIZATION.—The
24 shortfall amortization installments deter-
25 mined under this subparagraph are the

1 amounts necessary to amortize the short-
2 fall amortization base of the plan for the
3 election year in level annual installments
4 over the 15-plan-year period beginning
5 with the election year (using the segment
6 rates under subparagraph (C) for the elec-
7 tion year).

8 “(iv) ELECTION.—

9 “(I) IN GENERAL.—The plan
10 sponsor of a plan may elect to have
11 this subparagraph apply to not more
12 than 2 eligible plan years with respect
13 to the plan, except that in the case of
14 a plan described in section 106 of the
15 Pension Protection Act of 2006, the
16 plan sponsor may only elect to have
17 this subparagraph apply to a plan
18 year beginning in 2011.

19 “(II) AMORTIZATION SCHED-
20 ULE.—Such election shall specify
21 whether the amortization schedule
22 under clause (ii) or (iii) shall apply to
23 an election year, except that if a plan
24 sponsor elects to have this subpara-
25 graph apply to 2 eligible plan years,

1 the plan sponsor must elect the same
2 schedule for both years.

3 “(III) OTHER RULES.—Such
4 election shall be made at such time,
5 and in such form and manner, as
6 shall be prescribed by the Secretary of
7 the Treasury, and may be revoked
8 only with the consent of the Secretary
9 of the Treasury. The Secretary of the
10 Treasury shall, before granting a rev-
11 ocation request, provide the Pension
12 Benefit Guaranty Corporation an op-
13 portunity to comment on the condi-
14 tions applicable to the treatment of
15 any portion of the election year short-
16 fall amortization base that remains
17 unamortized as of the revocation date.

18 “(v) ELIGIBLE PLAN YEAR.—For pur-
19 poses of this subparagraph, the term ‘eligi-
20 ble plan year’ means any plan year begin-
21 ning in 2008, 2009, 2010, or 2011, except
22 that a plan year shall only be treated as an
23 eligible plan year if the due date under
24 subsection (j)(1) for the payment of the
25 minimum required contribution for such

1 plan year occurs on or after the date of the
2 enactment of this subparagraph.

3 “(vi) REPORTING.—A plan sponsor of
4 a plan who makes an election under clause
5 (i) shall—

6 “(I) give notice of the election to
7 participants and beneficiaries of the
8 plan, and

9 “(II) inform the Pension Benefit
10 Guaranty Corporation of such election
11 in such form and manner as the Di-
12 rector of the Pension Benefit Guar-
13 anty Corporation may prescribe.

14 “(vii) INCREASES IN REQUIRED IN-
15 STALLMENTS IN CERTAIN CASES.—For in-
16 creases in required contributions in cases
17 of excess compensation or extraordinary
18 dividends or stock redemptions, see para-
19 graph (7).”.

20 (2) INCREASES IN REQUIRED INSTALLMENTS IN
21 CERTAIN CASES.—Section 303(c) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C.
23 1083(c)) is amended by adding at the end the fol-
24 lowing paragraph:

1 “(7) INCREASES IN ALTERNATE REQUIRED IN-
2 STALLMENTS IN CASES OF EXCESS COMPENSATION
3 OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMP-
4 TIONS.—

5 “(A) IN GENERAL.—If there is an install-
6 ment acceleration amount with respect to a
7 plan for any plan year in the restriction period
8 with respect to an election year under para-
9 graph (2)(D), then the shortfall amortization
10 installment otherwise determined and payable
11 under such paragraph for such plan year shall,
12 subject to the limitation under subparagraph
13 (B), be increased by such amount.

14 “(B) TOTAL INSTALLMENTS LIMITED TO
15 SHORTFALL BASE.—Subject to rules prescribed
16 by the Secretary of the Treasury, if a shortfall
17 amortization installment with respect to any
18 shortfall amortization base for an election year
19 is required to be increased for any plan year
20 under subparagraph (A)—

21 “(i) such increase shall not result in
22 the amount of such installment exceeding
23 the present value of such installment and
24 all succeeding installments with respect to
25 such base (determined without regard to

1 such increase but after application of
2 clause (ii)), and

3 “(ii) subsequent shortfall amortization
4 installments with respect to such base
5 shall, in reverse order of the otherwise re-
6 quired installments, be reduced to the ex-
7 tent necessary to limit the present value of
8 such subsequent shortfall amortization in-
9 stallments (after application of this para-
10 graph) to the present value of the remain-
11 ing unamortized shortfall amortization
12 base.

13 “(C) INSTALLMENT ACCELERATION
14 AMOUNT.—For purposes of this paragraph—

15 “(i) IN GENERAL.—The term ‘install-
16 ment acceleration amount’ means, with re-
17 spect to any plan year in a restriction pe-
18 riod with respect to an election year, the
19 sum of—

20 “(I) the aggregate amount of ex-
21 cess employee compensation deter-
22 mined under subparagraph (D) with
23 respect to all employees for the plan
24 year, plus

1 “(II) the aggregate amount of
2 extraordinary dividends and redemp-
3 tions determined under subparagraph
4 (E) for the plan year.

5 “(ii) ANNUAL LIMITATION.—The in-
6 stallment acceleration amount for any plan
7 year shall not exceed the excess (if any)
8 of—

9 “(I) the sum of the shortfall am-
10 ortization installments for the plan
11 year and all preceding plan years in
12 the amortization period elected under
13 paragraph (2)(D) with respect to the
14 shortfall amortization base with re-
15 spect to an election year, determined
16 without regard to paragraph (2)(D)
17 and this paragraph, over

18 “(II) the sum of the shortfall am-
19 ortization installments for such plan
20 year and all such preceding plan
21 years, determined after application of
22 paragraph (2)(D) (and in the case of
23 any preceding plan year, after applica-
24 tion of this paragraph).

1 “(iii) CARRYOVER OF EXCESS IN-
2 STALLMENT ACCELERATION AMOUNTS.—

3 “(I) IN GENERAL.—If the install-
4 ment acceleration amount for any
5 plan year (determined without regard
6 to clause (ii)) exceeds the limitation
7 under clause (ii), then, subject to sub-
8 clause (II), such excess shall be treat-
9 ed as an installment acceleration
10 amount with respect to the succeeding
11 plan year.

12 “(II) CAP TO APPLY.—If any
13 amount treated as an installment ac-
14 celeration amount under subclause (I)
15 or this subclause with respect any
16 succeeding plan year, when added to
17 other installment acceleration
18 amounts (determined without regard
19 to clause (ii)) with respect to the plan
20 year, exceeds the limitation under
21 clause (ii), the portion of such amount
22 representing such excess shall be
23 treated as an installment acceleration
24 amount with respect to the next suc-
25 ceeding plan year.

1 “(III) LIMITATION ON YEARS TO
2 WHICH AMOUNTS CARRIED FOR.—No
3 amount shall be carried under sub-
4 clause (I) or (II) to a plan year which
5 begins after the first plan year fol-
6 lowing the last plan year in the re-
7 striction period (or after the second
8 plan year following such last plan year
9 in the case of an election year with re-
10 spect to which 15-year amortization
11 was elected under paragraph (2)(D)).

12 “(IV) ORDERING RULES.—For
13 purposes of applying subclause (II),
14 installment acceleration amounts for
15 the plan year (determined without re-
16 gard to any carryover under this
17 clause) shall be applied first against
18 the limitation under clause (ii) and
19 then carryovers to such plan year
20 shall be applied against such limita-
21 tion on a first-in, first-out basis.

22 “(D) EXCESS EMPLOYEE COMPENSA-
23 TION.—For purposes of this paragraph—

24 “(i) IN GENERAL.—The term ‘excess
25 employee compensation’ means, with re-

1 spect to any employee for any plan year,
2 the excess (if any) of—

3 “(I) the aggregate amount in-
4 cludible in income under chapter 1 of
5 the Internal Revenue Code of 1986
6 for remuneration during the calendar
7 year in which such plan year begins
8 for services performed by the em-
9 ployee for the plan sponsor (whether
10 or not performed during such cal-
11 endar year), over

12 “(II) \$1,000,000.

13 “(ii) AMOUNTS SET ASIDE FOR NON-
14 QUALIFIED DEFERRED COMPENSATION.—
15 If during any calendar year assets are set
16 aside or reserved (directly or indirectly) in
17 a trust (or other arrangement as deter-
18 mined by the Secretary of the Treasury),
19 or transferred to such a trust or other ar-
20 rangement, by a plan sponsor for purposes
21 of paying deferred compensation of an em-
22 ployee under a nonqualified deferred com-
23 pensation plan (as defined in section 409A
24 of such Code) of the plan sponsor, then,
25 for purposes of clause (i), the amount of

1 such assets shall be treated as remunera-
2 tion of the employee includible in income
3 for the calendar year unless such amount
4 is otherwise includible in income for such
5 year. An amount to which the preceding
6 sentence applies shall not be taken into ac-
7 count under this paragraph for any subse-
8 quent calendar year.

9 “(iii) ONLY REMUNERATION FOR CER-
10 TAIN POST-2009 SERVICES COUNTED.—Re-
11 munerations shall be taken into account
12 under clause (i) only to the extent attrib-
13 utable to services performed by the em-
14 ployee for the plan sponsor after February
15 28, 2010.

16 “(iv) EXCEPTION FOR CERTAIN EQ-
17 UITY PAYMENTS.—

18 “(I) IN GENERAL.—There shall
19 not be taken into account under
20 clause (i)(I) any amount includible in
21 income with respect to the granting
22 after February 28, 2010, of service
23 recipient stock (within the meaning of
24 section 409A of the Internal Revenue
25 Code of 1986) that, upon such grant,

1 is subject to a substantial risk of for-
2 feiture (as defined under section
3 83(c)(1) of such Code) for at least 5
4 years from the date of such grant.

5 “(II) SECRETARIAL AUTHOR-
6 ITY.—The Secretary of the Treasury
7 may by regulation provide for the ap-
8 plication of this clause in the case of
9 a person other than a corporation.

10 “(v) OTHER EXCEPTIONS.—The fol-
11 lowing amounts includible in income shall
12 not be taken into account under clause
13 (i)(I):

14 “(I) COMMISSIONS.—Any remu-
15 neration payable on a commission
16 basis solely on account of income di-
17 rectly generated by the individual per-
18 formance of the individual to whom
19 such remuneration is payable.

20 “(II) CERTAIN PAYMENTS UNDER
21 EXISTING CONTRACTS.—Any remu-
22 neration consisting of nonqualified de-
23 ferred compensation, restricted stock,
24 stock options, or stock appreciation
25 rights payable or granted under a

1 written binding contract that was in
2 effect on March 1, 2010, and which
3 was not modified in any material re-
4 spect before such remuneration is
5 paid.

6 “(vi) SELF-EMPLOYED INDIVIDUAL
7 TREATED AS EMPLOYEE.—The term ‘em-
8 ployee’ includes, with respect to a calendar
9 year, a self-employed individual who is
10 treated as an employee under section
11 401(c) of such Code for the taxable year
12 ending during such calendar year, and the
13 term ‘compensation’ shall include earned
14 income of such individual with respect to
15 such self-employment.

16 “(vii) INDEXING OF AMOUNT.—In the
17 case of any calendar year beginning after
18 2010, the dollar amount under clause
19 (i)(II) shall be increased by an amount
20 equal to—

21 “(I) such dollar amount, multi-
22 plied by

23 “(II) the cost-of-living adjust-
24 ment determined under section 1(f)(3)
25 of such Code for the calendar year,

1 determined by substituting ‘calendar
2 year 2009’ for ‘calendar year 1992’ in
3 subparagraph (B) thereof.

4 If the amount of any increase under clause
5 (i) is not a multiple of \$1,000, such in-
6 crease shall be rounded to the next lowest
7 multiple of \$1,000.

8 “(E) EXTRAORDINARY DIVIDENDS AND
9 REDEMPTIONS.—

10 “(i) IN GENERAL.—The amount de-
11 termined under this subparagraph for any
12 plan year is the excess (if any) of the sum
13 of the dividends declared during the plan
14 year by the plan sponsor plus the aggre-
15 gate amount paid for the redemption of
16 stock of the plan sponsor redeemed during
17 the plan year over the greater of—

18 “(I) the adjusted net income
19 (within the meaning of section 4043)
20 of the plan sponsor for the preceding
21 plan year, determined without regard
22 to any reduction by reason of interest,
23 taxes, depreciation, or amortization,
24 or

1 “(II) in the case of a plan spon-
2 sor that determined and declared divi-
3 dends in the same manner for at least
4 5 consecutive years immediately pre-
5 ceding such plan year, the aggregate
6 amount of dividends determined and
7 declared for such plan year using such
8 manner.

9 “(ii) ONLY CERTAIN POST-2009 DIVI-
10 DENDS AND REDEMPTIONS COUNTED.—
11 For purposes of clause (i), there shall only
12 be taken into account dividends declared,
13 and redemptions occurring, after February
14 28, 2010.

15 “(iii) EXCEPTION FOR INTRA-GROUP
16 DIVIDENDS.—Dividends paid by one mem-
17 ber of a controlled group (as defined in
18 section 302(d)(3)) to another member of
19 such group shall not be taken into account
20 under clause (i).

21 “(iv) EXCEPTION FOR CERTAIN RE-
22 DEMPTIONS.—Redemptions that are made
23 pursuant to a plan maintained with respect
24 to employees, or that are made on account
25 of the death, disability, or termination of

1 employment of an employee or shareholder,
2 shall not be taken into account under
3 clause (i).

4 “(v) EXCEPTION FOR CERTAIN PRE-
5 FERRED STOCK.—

6 “(I) IN GENERAL.—Dividends
7 and redemptions with respect to appli-
8 cable preferred stock shall not be
9 taken into account under clause (i) to
10 the extent that dividends accrue with
11 respect to such stock at a specified
12 rate in all events and without regard
13 to the plan sponsor’s income, and in-
14 terest accrues on any unpaid divi-
15 dends with respect to such stock.

16 “(II) APPLICABLE PREFERRED
17 STOCK.—For purposes of subclause
18 (I), the term ‘applicable preferred
19 stock’ means preferred stock which
20 was issued before March 1, 2010 (or
21 which was issued after such date and
22 is held by an employee benefit plan
23 subject to the provisions of this title).

24 “(F) OTHER DEFINITIONS AND RULES.—

25 For purposes of this paragraph—

1 “(i) PLAN SPONSOR.—The term ‘ plan
2 sponsor’ includes any member of the plan
3 sponsor’s controlled group (as defined in
4 section 302(d)(3)).

5 “(ii) RESTRICTION PERIOD.—The
6 term ‘restriction period’ means, with re-
7 spect to any election year—

8 “(I) except as provided in sub-
9 clause (II), the 3-year period begin-
10 ning with the election year (or, if
11 later, the first plan year beginning
12 after December 31, 2009), and

13 “(II) if the plan sponsor elects
14 15-year amortization for the shortfall
15 amortization base for the election
16 year, the 5-year period beginning with
17 the election year (or, if later, the first
18 plan year beginning after December
19 31, 2009).

20 “(iii) ELECTIONS FOR MULTIPLE
21 PLANS.—If a plan sponsor makes elections
22 under paragraph (2)(D) with respect to 2
23 or more plans, the Secretary of the Treas-
24 ury shall provide rules for the application
25 of this paragraph to such plans, including

1 rules for the ratable allocation of any in-
2 stallment acceleration amount among such
3 plans on the basis of each plan’s relative
4 reduction in the plan’s shortfall amortiza-
5 tion installment for the first plan year in
6 the amortization period described in sub-
7 paragraph (A) (determined without regard
8 to this paragraph).

9 “(iv) MERGERS AND ACQUISITIONS.—
10 The Secretary of the Treasury shall pre-
11 scribe rules for the application of para-
12 graph (2)(D) and this paragraph in any
13 case where there is a merger or acquisition
14 involving a plan sponsor making the elec-
15 tion under paragraph (2)(D).”.

16 (3) CONFORMING AMENDMENTS.—Section 303
17 of such Act (29 U.S.C. 1083) is amended—

18 (A) in subsection (c)(1), by striking “the
19 shortfall amortization bases for such plan year
20 and each of the 6 preceding plan years” and in-
21 sserting “any shortfall amortization base which
22 has not been fully amortized under this sub-
23 section”, and

24 (B) in subsection (j)(3), by adding at the
25 end the following:

1 “(F) QUARTERLY CONTRIBUTIONS NOT TO
2 INCLUDE CERTAIN INCREASED CONTRIBU-
3 TIONS.—Subparagraph (D) shall be applied
4 without regard to any increase under subsection
5 (c)(7).”.

6 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
7 1986.—

8 (1) IN GENERAL.—Paragraph (2) of section
9 430(c) is amended by adding at the end the fol-
10 lowing subparagraph:

11 “(D) SPECIAL ELECTION FOR ELIGIBLE
12 PLAN YEARS.—

13 “(i) IN GENERAL.—If a plan sponsor
14 elects to apply this subparagraph with re-
15 spect to the shortfall amortization base of
16 a plan for any eligible plan year (in this
17 subparagraph and paragraph (7) referred
18 to as an ‘election year’), then, notwith-
19 standing subparagraphs (A) and (B)—

20 “(I) the shortfall amortization in-
21 stallments with respect to such base
22 shall be determined under clause (ii)
23 or (iii), whichever is specified in the
24 election, and

1 “(II) the shortfall amortization
2 installment for any plan year in the 9-
3 plan-year period described in clause
4 (ii) or the 15-plan-year period de-
5 scribed in clause (iii), respectively,
6 with respect to such shortfall amorti-
7 zation base is the annual installment
8 determined under the applicable
9 clause for that year for that base.

10 “(ii) 2 PLUS 7 AMORTIZATION SCHED-
11 ULE.—The shortfall amortization install-
12 ments determined under this clause are—

13 “(I) in the case of the first 2
14 plan years in the 9-plan-year period
15 beginning with the election year, in-
16 terest on the shortfall amortization
17 base of the plan for the election year
18 (determined using the effective inter-
19 est rate for the plan for the election
20 year), and

21 “(II) in the case of the last 7
22 plan years in such 9-plan-year period,
23 the amounts necessary to amortize the
24 remaining balance of the shortfall am-
25 ortization base of the plan for the

1 election year in level annual install-
2 ments over such last 7 plan years
3 (using the segment rates under sub-
4 paragraph (C) for the election year).

5 “(iii) 15-YEAR AMORTIZATION.—The
6 shortfall amortization installments deter-
7 mined under this subparagraph are the
8 amounts necessary to amortize the short-
9 fall amortization base of the plan for the
10 election year in level annual installments
11 over the 15-plan-year period beginning
12 with the election year (using the segment
13 rates under subparagraph (C) for the elec-
14 tion year).

15 “(iv) ELECTION.—

16 “(I) IN GENERAL.—The plan
17 sponsor of a plan may elect to have
18 this subparagraph apply to not more
19 than 2 eligible plan years with respect
20 to the plan, except that in the case of
21 a plan described in section 106 of the
22 Pension Protection Act of 2006, the
23 plan sponsor may only elect to have
24 this subparagraph apply to a plan
25 year beginning in 2011.

1 “(II) AMORTIZATION SCHED-
2 ULE.—Such election shall specify
3 whether the amortization schedule
4 under clause (ii) or (iii) shall apply to
5 an election year, except that if a plan
6 sponsor elects to have this subpara-
7 graph apply to 2 eligible plan years,
8 the plan sponsor must elect the same
9 schedule for both years.

10 “(III) OTHER RULES.—Such
11 election shall be made at such time,
12 and in such form and manner, as
13 shall be prescribed by the Secretary,
14 and may be revoked only with the
15 consent of the Secretary. The Sec-
16 retary shall, before granting a revoca-
17 tion request, provide the Pension Ben-
18 efit Guaranty Corporation an oppor-
19 tunity to comment on the conditions
20 applicable to the treatment of any
21 portion of the election year shortfall
22 amortization base that remains
23 unamortized as of the revocation date.

24 “(v) ELIGIBLE PLAN YEAR.—For pur-
25 poses of this subparagraph, the term ‘eligi-

1 ble plan year’ means any plan year begin-
2 ning in 2008, 2009, 2010, or 2011, except
3 that a plan year shall only be treated as an
4 eligible plan year if the due date under
5 subsection (j)(1) for the payment of the
6 minimum required contribution for such
7 plan year occurs on or after the date of the
8 enactment of this subparagraph.

9 “(vi) REPORTING.—A plan sponsor of
10 a plan who makes an election under clause
11 (i) shall—

12 “(I) give notice of the election to
13 participants and beneficiaries of the
14 plan, and

15 “(II) inform the Pension Benefit
16 Guaranty Corporation of such election
17 in such form and manner as the Di-
18 rector of the Pension Benefit Guar-
19 anty Corporation may prescribe.

20 “(vii) INCREASES IN REQUIRED IN-
21 STALLMENTS IN CERTAIN CASES.—For in-
22 creases in required contributions in cases
23 of excess compensation or extraordinary
24 dividends or stock redemptions, see para-
25 graph (7).”.

1 (2) INCREASES IN REQUIRED CONTRIBUTIONS
2 IF EXCESS COMPENSATION PAID.—Section 430(c) is
3 amended by adding at the end the following para-
4 graph:

5 “(7) INCREASES IN ALTERNATE REQUIRED IN-
6 STALLMENTS IN CASES OF EXCESS COMPENSATION
7 OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMP-
8 TIONS.—

9 “(A) IN GENERAL.—If there is an install-
10 ment acceleration amount with respect to a
11 plan for any plan year in the restriction period
12 with respect to an election year under para-
13 graph (2)(D), then the shortfall amortization
14 installment otherwise determined and payable
15 under such paragraph for such plan year shall,
16 subject to the limitation under subparagraph
17 (B), be increased by such amount.

18 “(B) TOTAL INSTALLMENTS LIMITED TO
19 SHORTFALL BASE.—Subject to rules prescribed
20 by the Secretary, if a shortfall amortization in-
21 stallment with respect to any shortfall amorti-
22 zation base for an election year is required to
23 be increased for any plan year under subpara-
24 graph (A)—

1 “(i) such increase shall not result in
2 the amount of such installment exceeding
3 the present value of such installment and
4 all succeeding installments with respect to
5 such base (determined without regard to
6 such increase but after application of
7 clause (ii)), and

8 “(ii) subsequent shortfall amortization
9 installments with respect to such base
10 shall, in reverse order of the otherwise re-
11 quired installments, be reduced to the ex-
12 tent necessary to limit the present value of
13 such subsequent shortfall amortization in-
14 stallments (after application of this para-
15 graph) to the present value of the remain-
16 ing unamortized shortfall amortization
17 base.

18 “(C) INSTALLMENT ACCELERATION
19 AMOUNT.—For purposes of this paragraph—

20 “(i) IN GENERAL.—The term ‘install-
21 ment acceleration amount’ means, with re-
22 spect to any plan year in a restriction pe-
23 riod with respect to an election year, the
24 sum of—

1 “(I) the aggregate amount of ex-
2 cess employee compensation deter-
3 mined under subparagraph (D) with
4 respect to all employees for the plan
5 year, plus

6 “(II) the aggregate amount of
7 extraordinary dividends and redemp-
8 tions determined under subparagraph
9 (E) for the plan year.

10 “(ii) ANNUAL LIMITATION.—The in-
11 stallment acceleration amount for any plan
12 year shall not exceed the excess (if any)
13 of—

14 “(I) the sum of the shortfall am-
15 ortization installments for the plan
16 year and all preceding plan years in
17 the amortization period elected under
18 paragraph (2)(D) with respect to the
19 shortfall amortization base with re-
20 spect to an election year, determined
21 without regard to paragraph (2)(D)
22 and this paragraph, over

23 “(II) the sum of the shortfall am-
24 ortization installments for such plan
25 year and all such preceding plan

1 years, determined after application of
2 paragraph (2)(D) (and in the case of
3 any preceding plan year, after applica-
4 tion of this paragraph).

5 “(iii) CARRYOVER OF EXCESS IN-
6 STALLMENT ACCELERATION AMOUNTS.—

7 “(I) IN GENERAL.—If the install-
8 ment acceleration amount for any
9 plan year (determined without regard
10 to clause (ii)) exceeds the limitation
11 under clause (ii), then, subject to sub-
12 clause (II), such excess shall be treat-
13 ed as an installment acceleration
14 amount with respect to the succeeding
15 plan year.

16 “(II) CAP TO APPLY.—If any
17 amount treated as an installment ac-
18 celeration amount under subclause (I)
19 or this subclause with respect any
20 succeeding plan year, when added to
21 other installment acceleration
22 amounts (determined without regard
23 to clause (ii)) with respect to the plan
24 year, exceeds the limitation under
25 clause (ii), the portion of such amount

1 representing such excess shall be
2 treated as an installment acceleration
3 amount with respect to the next suc-
4 ceeding plan year.

5 “(III) LIMITATION ON YEARS TO
6 WHICH AMOUNTS CARRIED FOR.—No
7 amount shall be carried under sub-
8 clause (I) or (II) to a plan year which
9 begins after the first plan year fol-
10 lowing the last plan year in the re-
11 striction period (or after the second
12 plan year following such last plan year
13 in the case of an election year with re-
14 spect to which 15-year amortization
15 was elected under paragraph (2)(D)).

16 “(IV) ORDERING RULES.—For
17 purposes of applying subclause (II),
18 installment acceleration amounts for
19 the plan year (determined without re-
20 gard to any carryover under this
21 clause) shall be applied first against
22 the limitation under clause (ii) and
23 then carryovers to such plan year
24 shall be applied against such limita-
25 tion on a first-in, first-out basis.

1 “(D) EXCESS EMPLOYEE COMPENSA-
2 TION.—For purposes of this paragraph—

3 “(i) IN GENERAL.—The term ‘excess
4 employee compensation’ means, with re-
5 spect to any employee for any plan year,
6 the excess (if any) of—

7 “(I) the aggregate amount in-
8 cludible in income under this chapter
9 for remuneration during the calendar
10 year in which such plan year begins
11 for services performed by the em-
12 ployee for the plan sponsor (whether
13 or not performed during such cal-
14 endar year), over

15 “(II) \$1,000,000.

16 “(ii) AMOUNTS SET ASIDE FOR NON-
17 QUALIFIED DEFERRED COMPENSATION.—
18 If during any calendar year assets are set
19 aside or reserved (directly or indirectly) in
20 a trust (or other arrangement as deter-
21 mined by the Secretary), or transferred to
22 such a trust or other arrangement, by a
23 plan sponsor for purposes of paying de-
24 ferred compensation of an employee under
25 a nonqualified deferred compensation plan

1 (as defined in section 409A) of the plan
2 sponsor, then, for purposes of clause (i),
3 the amount of such assets shall be treated
4 as remuneration of the employee includible
5 in income for the calendar year unless such
6 amount is otherwise includible in income
7 for such year. An amount to which the
8 preceding sentence applies shall not be
9 taken into account under this paragraph
10 for any subsequent calendar year.

11 “(iii) ONLY REMUNERATION FOR CER-
12 TAIN POST-2009 SERVICES COUNTED.—Re-
13 munerations shall be taken into account
14 under clause (i) only to the extent attrib-
15 utable to services performed by the em-
16 ployee for the plan sponsor after February
17 28, 2010.

18 “(iv) EXCEPTION FOR CERTAIN EQ-
19 UITY PAYMENTS.—

20 “(I) IN GENERAL.—There shall
21 not be taken into account under
22 clause (i)(I) any amount includible in
23 income with respect to the granting
24 after February 28, 2010, of service
25 recipient stock (within the meaning of

1 section 409A) that, upon such grant,
2 is subject to a substantial risk of for-
3 feiture (as defined under section
4 83(c)(1)) for at least 5 years from the
5 date of such grant.

6 “(II) SECRETARIAL AUTHOR-
7 ITY.—The Secretary may by regula-
8 tion provide for the application of this
9 clause in the case of a person other
10 than a corporation.

11 “(v) OTHER EXCEPTIONS.—The fol-
12 lowing amounts includible in income shall
13 not be taken into account under clause
14 (i)(I):

15 “(I) COMMISSIONS.—Any remu-
16 neration payable on a commission
17 basis solely on account of income di-
18 rectly generated by the individual per-
19 formance of the individual to whom
20 such remuneration is payable.

21 “(II) CERTAIN PAYMENTS UNDER
22 EXISTING CONTRACTS.—Any remu-
23 neration consisting of nonqualified de-
24 ferred compensation, restricted stock,
25 stock options, or stock appreciation

1 rights payable or granted under a
2 written binding contract that was in
3 effect on March 1, 2010, and which
4 was not modified in any material re-
5 spect before such remuneration is
6 paid.

7 “(vi) SELF-EMPLOYED INDIVIDUAL
8 TREATED AS EMPLOYEE.—The term ‘em-
9 ployee’ includes, with respect to a calendar
10 year, a self-employed individual who is
11 treated as an employee under section
12 401(c) for the taxable year ending during
13 such calendar year, and the term ‘com-
14 pensation’ shall include earned income of
15 such individual with respect to such self-
16 employment.

17 “(vii) INDEXING OF AMOUNT.—In the
18 case of any calendar year beginning after
19 2010, the dollar amount under clause
20 (i)(II) shall be increased by an amount
21 equal to—

22 “(I) such dollar amount, multi-
23 plied by

24 “(II) the cost-of-living adjust-
25 ment determined under section 1(f)(3)

1 for the calendar year, determined by
2 substituting ‘calendar year 2009’ for
3 ‘calendar year 1992’ in subparagraph
4 (B) thereof.

5 If the amount of any increase under clause
6 (i) is not a multiple of \$1,000, such in-
7 crease shall be rounded to the next lowest
8 multiple of \$1,000.

9 “(E) EXTRAORDINARY DIVIDENDS AND
10 REDEMPTIONS.—

11 “(i) IN GENERAL.—The amount de-
12 termined under this subparagraph for any
13 plan year is the excess (if any) of the sum
14 of the dividends declared during the plan
15 year by the plan sponsor plus the aggre-
16 gate amount paid for the redemption of
17 stock of the plan sponsor redeemed during
18 the plan year over the greater of—

19 “(I) the adjusted net income
20 (within the meaning of section 4043
21 of the Employee Retirement Income
22 Security Act of 1974) of the plan
23 sponsor for the preceding plan year,
24 determined without regard to any re-

1 duction by reason of interest, taxes,
2 depreciation, or amortization, or

3 “(II) in the case of a plan spon-
4 sor that determined and declared divi-
5 dends in the same manner for at least
6 5 consecutive years immediately pre-
7 ceding such plan year, the aggregate
8 amount of dividends determined and
9 declared for such plan year using such
10 manner.

11 “(ii) ONLY CERTAIN POST-2009 DIVI-
12 DENDS AND REDEMPTIONS COUNTED.—
13 For purposes of clause (i), there shall only
14 be taken into account dividends declared,
15 and redemptions occurring, after February
16 28, 2010.

17 “(iii) EXCEPTION FOR INTRA-GROUP
18 DIVIDENDS.—Dividends paid by one mem-
19 ber of a controlled group (as defined in
20 section 412(d)(3)) to another member of
21 such group shall not be taken into account
22 under clause (i).

23 “(iv) EXCEPTION FOR CERTAIN RE-
24 DEMPTIONS.—Redemptions that are made
25 pursuant to a plan maintained with respect

1 to employees, or that are made on account
2 of the death, disability, or termination of
3 employment of an employee or shareholder,
4 shall not be taken into account under
5 clause (i).

6 “(v) EXCEPTION FOR CERTAIN PRE-
7 FERRED STOCK.—

8 “(I) IN GENERAL.—Dividends
9 and redemptions with respect to appli-
10 cable preferred stock shall not be
11 taken into account under clause (i) to
12 the extent that dividends accrue with
13 respect to such stock at a specified
14 rate in all events and without regard
15 to the plan sponsor’s income, and in-
16 terest accrues on any unpaid divi-
17 dends with respect to such stock.

18 “(II) APPLICABLE PREFERRED
19 STOCK.—For purposes of subclause
20 (I), the term ‘applicable preferred
21 stock’ means preferred stock which
22 was issued before March 1, 2010 (or
23 which was issued after such date and
24 is held by an employee benefit plan
25 subject to the provisions of title I of

1 Employee Retirement Income Security
2 Act of 1974).

3 “(F) OTHER DEFINITIONS AND RULES.—

4 For purposes of this paragraph—

5 “(i) PLAN SPONSOR.—The term ‘ plan
6 sponsor’ includes any member of the plan
7 sponsor’s controlled group (as defined in
8 section 412(d)(3)).

9 “(ii) RESTRICTION PERIOD.—The
10 term ‘restriction period’ means, with re-
11 spect to any election year—

12 “(I) except as provided in sub-
13 clause (II), the 3-year period begin-
14 ning with the election year (or, if
15 later, the first plan year beginning
16 after December 31, 2009), and

17 “(II) if the plan sponsor elects
18 15-year amortization for the shortfall
19 amortization base for the election
20 year, the 5-year period beginning with
21 the election year (or, if later, the first
22 plan year beginning after December
23 31, 2009).

24 “(iii) ELECTIONS FOR MULTIPLE
25 PLANS.—If a plan sponsor makes elections

1 under paragraph (2)(D) with respect to 2
2 or more plans, the Secretary shall provide
3 rules for the application of this paragraph
4 to such plans, including rules for the rat-
5 able allocation of any installment accelera-
6 tion amount among such plans on the
7 basis of each plan’s relative reduction in
8 the plan’s shortfall amortization install-
9 ment for the first plan year in the amorti-
10 zation period described in subparagraph
11 (A) (determined without regard to this
12 paragraph).

13 “(iv) MERGERS AND ACQUISITIONS.—
14 The Secretary shall prescribe rules for the
15 application of paragraph (2)(D) and this
16 paragraph in any case where there is a
17 merger or acquisition involving a plan
18 sponsor making the election under para-
19 graph (2)(D).”.

20 (3) CONFORMING AMENDMENTS.—Section 430
21 is amended—

22 (A) in subsection (c)(1), by striking “the
23 shortfall amortization bases for such plan year
24 and each of the 6 preceding plan years” and in-
25 serting “any shortfall amortization base which

1 has not been fully amortized under this sub-
2 section”, and

3 (B) in subsection (j)(3), by adding at the
4 end the following:

5 “(F) QUARTERLY CONTRIBUTIONS NOT TO
6 INCLUDE CERTAIN INCREASED CONTRIBU-
7 TIONS.—Subparagraph (D) shall be applied
8 without regard to any increase under subsection
9 (c)(7).”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to plan years beginning after De-
12 cember 31, 2007.

13 **SEC. 302. APPLICATION OF EXTENDED AMORTIZATION PE-**
14 **RIOD TO PLANS SUBJECT TO PRIOR LAW**
15 **FUNDING RULES.**

16 (a) IN GENERAL.—Title I of the Pension Protection
17 Act of 2006 is amended by redesignating section 107 as
18 section 108 and by inserting the following after section
19 106:

20 **“SEC. 107. APPLICATION OF EXTENDED AMORTIZATION PE-**
21 **RIODS TO PLANS WITH DELAYED EFFECTIVE**
22 **DATE.**

23 “(a) IN GENERAL.—If the plan sponsor of a plan to
24 which section 104, 105, or 106 of this Act applies elects
25 to have this section apply for any eligible plan year (in

1 this section referred to as an ‘election year’), section 302
2 of the Employee Retirement Income Security Act of 1974
3 and section 412 of the Internal Revenue Code of 1986
4 (as in effect before the amendments made by this subtitle
5 and subtitle B) shall apply to such year in the manner
6 described in subsection (b) or (c), whichever is specified
7 in the election. All references in this section to ‘such Act’
8 or ‘such Code’ shall be to such Act or such Code as in
9 effect before the amendments made by this subtitle and
10 subtitle B.

11 “(b) APPLICATION OF 2 AND 7 RULE.—In the case
12 of an election year to which this subsection applies—

13 “(1) 2-YEAR LOOKBACK FOR DETERMINING
14 DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN
15 PLANS.—For purposes of applying section 302(d)(9)
16 of such Act and section 412(l)(9) of such Code, the
17 funded current liability percentage (as defined in
18 subparagraph (C) thereof) for such plan for such
19 plan year shall be such funded current liability per-
20 centage of such plan for the second plan year pre-
21 ceding the first election year of such plan.

22 “(2) CALCULATION OF DEFICIT REDUCTION
23 CONTRIBUTION.—For purposes of applying section
24 302(d) of such Act and section 412(l) of such Code

1 to a plan to which such sections apply (after taking
2 into account paragraph (1))—

3 “(A) in the case of the increased unfunded
4 new liability of the plan, the applicable percent-
5 age described in section 302(d)(4)(C) of such
6 Act and section 412(l)(4)(C) of such Code shall
7 be the third segment rate described in sections
8 104(b), 105(b), and 106(b) of this Act, and

9 “(B) in the case of the excess of the un-
10 funded new liability over the increased un-
11 funded new liability, such applicable percentage
12 shall be determined without regard to this sec-
13 tion.

14 “(c) APPLICATION OF 15-YEAR AMORTIZATION.—In
15 the case of an election year to which this subsection ap-
16 plies, for purposes of applying section 302(d) of such Act
17 and section 412(l) of such Code—

18 “(1) in the case of the increased unfunded new
19 liability of the plan, the applicable percentage de-
20 scribed in section 302(d)(4)(C) of such Act and sec-
21 tion 412(l)(4)(C) of such Code for any pre-effective
22 date plan year beginning with or after the first elec-
23 tion year shall be the ratio of—

24 “(A) the annual installments payable in
25 each year if the increased unfunded new liabil-

1 ity for such plan year were amortized over 15
2 years, using an interest rate equal to the third
3 segment rate described in sections 104(b),
4 105(b), and 106(b) of this Act, to

5 “(B) the increased unfunded new liability
6 for such plan year, and

7 “(2) in the case of the excess of the unfunded
8 new liability over the increased unfunded new liabil-
9 ity, such applicable percentage shall be determined
10 without regard to this section.

11 “(d) ELECTION.—

12 “(1) IN GENERAL.—The plan sponsor of a plan
13 may elect to have this section apply to not more
14 than 2 eligible plan years with respect to the plan,
15 except that in the case of a plan to which section
16 106 of this Act applies, the plan sponsor may only
17 elect to have this section apply to 1 eligible plan
18 year.

19 “(2) AMORTIZATION SCHEDULE.—Such election
20 shall specify whether the rules under subsection (b)
21 or (c) shall apply to an election year, except that if
22 a plan sponsor elects to have this section apply to
23 2 eligible plan years, the plan sponsor must elect the
24 same rule for both years.

1 “(3) OTHER RULES.—Such election shall be
2 made at such time, and in such form and manner,
3 as shall be prescribed by the Secretary of the Treas-
4 ury, and may be revoked only with the consent of
5 the Secretary of the Treasury.

6 “(e) DEFINITIONS.—For purposes of this section—

7 “(1) ELIGIBLE PLAN YEAR.—For purposes of
8 this subparagraph, the term ‘eligible plan year’
9 means any plan year beginning in 2008, 2009, 2010,
10 or 2011, except that a plan year beginning in 2008
11 shall only be treated as an eligible plan year if the
12 due date for the payment of the minimum required
13 contribution for such plan year occurs on or after
14 the date of the enactment of this clause.

15 “(2) PRE-EFFECTIVE DATE PLAN YEAR.—The
16 term ‘pre-effective date plan year’ means, with re-
17 spect to a plan, any plan year prior to the first year
18 in which the amendments made by this subtitle and
19 subtitle B apply to the plan.

20 “(3) INCREASED UNFUNDED NEW LIABILITY.—
21 The term ‘increased unfunded new liability’ means,
22 with respect to a year, the excess (if any) of the un-
23 funded new liability over the amount of unfunded
24 new liability determined as if the value of the plan’s
25 assets determined under subsection 302(c)(2) of

1 such Act and section 412(c)(2) of such Code equaled
2 the product of the current liability of the plan for
3 the year multiplied by the funded current liability
4 percentage (as defined in section 302(d)(8)(B) of
5 such Act and 412(l)(8)(B) of such Code) of the plan
6 for the second plan year preceding the first election
7 year of such plan.

8 “(4) OTHER DEFINITIONS.—The terms ‘un-
9 funded new liability’ and ‘current liability’ shall have
10 the meanings set forth in section 302(d) of such Act
11 and section 412(l) of such Code.”.

12 (b) ELIGIBLE CHARITY PLANS.—Section 104 of the
13 Pension Protection Act of 2006 is amended—

14 (1) by striking “eligible cooperative plan” wher-
15 ever it appears in subsections (a) and (b) and insert-
16 ing “eligible cooperative plan or an eligible charity
17 plan”, and

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

20 “(d) ELIGIBLE CHARITY PLAN DEFINED.—For pur-
21 poses of this section, a plan shall be treated as an eligible
22 charity plan for a plan year if the plan is maintained by
23 more than one employer (determined without regard to
24 section 414(c) of the Internal Revenue Code) and 100 per-

1 cent of the employers are described in section 501(c)(3)
2 of such Code.”.

3 (c) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendment made by
5 subsection (a) shall take effect as if included in the
6 Pension Protection Act of 2006.

7 (2) ELIGIBLE CHARITY PLAN.—The amend-
8 ments made by subsection (b) shall apply to plan
9 years beginning after December 31, 2007, except
10 that a plan sponsor may elect to apply such amend-
11 ments to plan years beginning after December 31,
12 2008. Any such election shall be made at such time,
13 and in such form and manner, as shall be prescribed
14 by the Secretary of the Treasury, and may be re-
15 voked only with the consent of the Secretary of the
16 Treasury.

17 **SEC. 303. LOOKBACK FOR CERTAIN BENEFIT RESTRIC-**
18 **TIONS.**

19 (a) IN GENERAL.—

20 (1) AMENDMENT TO ERISA.—Section 206(g)(9)
21 of the Employee Retirement Income Security Act of
22 1974 is amended by adding at the end the following:

23 “(D) SPECIAL RULE FOR CERTAIN
24 YEARS.—Solely for purposes of any applicable
25 provision—

1 “(i) IN GENERAL.—For plan years be-
2 ginning on or after October 1, 2008, and
3 before October 1, 2010, the adjusted fund-
4 ing target attainment percentage of a plan
5 shall be the greater of—

6 “(I) such percentage, as deter-
7 mined without regard to this subpara-
8 graph, or

9 “(II) the adjusted funding target
10 attainment percentage for such plan
11 for the plan year beginning after Oc-
12 tober 1, 2007, and before October 1,
13 2008, as determined under rules pre-
14 scribed by the Secretary of the Treas-
15 ury.

16 “(ii) SPECIAL RULE.—In the case of a
17 plan for which the valuation date is not the
18 first day of the plan year—

19 “(I) clause (i) shall apply to plan
20 years beginning after December 31,
21 2007, and before January 1, 2010,
22 and

23 “(II) clause (i)(II) shall apply
24 based on the last plan year beginning
25 before November 1, 2007, as deter-

1 mined under rules prescribed by the
2 Secretary of the Treasury.

3 “(iii) APPLICABLE PROVISION.—For
4 purposes of this subparagraph, the term
5 ‘applicable provision’ means—

6 “(I) paragraph (3), but only for
7 purposes of applying such paragraph
8 to a payment which, as determined
9 under rules prescribed by the Sec-
10 retary of the Treasury, is a payment
11 under a social security leveling option
12 which accelerates payments under the
13 plan before, and reduces payments
14 after, a participant starts receiving so-
15 cial security benefits in order to pro-
16 vide substantially similar aggregate
17 payments both before and after such
18 benefits are received, and

19 “(II) paragraph (4).”.

20 (2) AMENDMENT TO INTERNAL REVENUE CODE
21 OF 1986.—Section 436(j) of the Internal Revenue
22 Code of 1986 is amended by adding at the end the
23 following:

24 “(3) SPECIAL RULE FOR CERTAIN YEARS.—
25 Solely for purposes of any applicable provision—

1 “(A) IN GENERAL.—For plan years begin-
2 ning on or after October 1, 2008, and before
3 October 1, 2010, the adjusted funding target
4 attainment percentage of a plan shall be the
5 greater of—

6 “(i) such percentage, as determined
7 without regard to this paragraph, or

8 “(ii) the adjusted funding target at-
9 tainment percentage for such plan for the
10 plan year beginning after October 1, 2007,
11 and before October 1, 2008, as determined
12 under rules prescribed by the Secretary.

13 “(B) SPECIAL RULE.—In the case of a
14 plan for which the valuation date is not the
15 first day of the plan year—

16 “(i) subparagraph (A) shall apply to
17 plan years beginning after December 31,
18 2007, and before January 1, 2010, and

19 “(ii) subparagraph (A)(ii) shall apply
20 based on the last plan year beginning be-
21 fore November 1, 2007, as determined
22 under rules prescribed by the Secretary.

23 “(C) APPLICABLE PROVISION.—For pur-
24 poses of this paragraph, the term ‘applicable
25 provision’ means—

1 “(i) subsection (d), but only for pur-
2 poses of applying such paragraph to a pay-
3 ment which, as determined under rules
4 prescribed by the Secretary, is a payment
5 under a social security leveling option
6 which accelerates payments under the plan
7 before, and reduces payments after, a par-
8 ticipant starts receiving social security ben-
9 efits in order to provide substantially simi-
10 lar aggregate payments both before and
11 after such benefits are received, and
12 “(ii) subsection (e).”.

13 (b) INTERACTION WITH WRERA RULE.—Section 203
14 of the Worker, Retiree, and Employer Recovery Act of
15 2008 shall apply to a plan for any plan year in lieu of
16 the amendments made by this section applying to sections
17 206(g)(4) of the Employee Retirement Income Security
18 Act of 1974 and 436(e) of the Internal Revenue Code of
19 1986 only to the extent that such section produces a high-
20 er adjusted funding target attainment percentage for such
21 plan for such year.

22 (c) EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by this section

1 shall apply to plan years beginning on or after Octo-
2 ber 1, 2008.

3 (2) SPECIAL RULE.—In the case of a plan for
4 which the valuation date is not the first day of the
5 plan year, the amendments made by this section
6 shall apply to plan years beginning after December
7 31, 2007.

8 **SEC. 304. LOOKBACK FOR CREDIT BALANCE RULE FOR**
9 **PLANS MAINTAINED BY CHARITIES.**

10 (a) AMENDMENT TO ERISA.—Paragraph (3) of sec-
11 tion 303(f) of the Employee Retirement Income Security
12 Act of 1974 is amended by adding the following at the
13 end thereof:

14 “(D) SPECIAL RULE FOR CERTAIN YEARS
15 OF PLANS MAINTAINED BY CHARITIES.—

16 “(i) IN GENERAL.—For purposes of
17 applying subparagraph (C) for plan years
18 beginning after August 31, 2009, and be-
19 fore September 1, 2011, the ratio deter-
20 mined under such subparagraph for the
21 preceding plan year shall be the greater
22 of—

23 “(I) such ratio, as determined
24 without regard to this subparagraph,
25 or

1 “(II) the ratio for such plan for
2 the plan year beginning after August
3 31, 2007, and before September 1,
4 2008, as determined under rules pre-
5 scribed by the Secretary of the Treas-
6 ury.

7 “(ii) SPECIAL RULE.—In the case of a
8 plan for which the valuation date is not the
9 first day of the plan year—

10 “(I) clause (i) shall apply to plan
11 years beginning after December 31,
12 2008, and before January 1, 2011,
13 and

14 “(II) clause (i)(II) shall apply
15 based on the last plan year beginning
16 before September 1, 2007, as deter-
17 mined under rules prescribed by the
18 Secretary of the Treasury.

19 “(iii) LIMITATION TO CHARITIES.—
20 This subparagraph shall not apply to any
21 plan unless such plan is maintained exclu-
22 sively by one or more organizations de-
23 scribed in section 501(c)(3) of the Internal
24 Revenue Code of 1986.”.

1 (b) AMENDMENT TO INTERNAL REVENUE CODE OF
2 1986.—Paragraph (3) of section 430(f) of the Internal
3 Revenue Code of 1986 is amended by adding the following
4 at the end thereof:

5 “(D) SPECIAL RULE FOR CERTAIN YEARS
6 OF PLANS MAINTAINED BY CHARITIES.—

7 “(i) IN GENERAL.—For purposes of
8 applying subparagraph (C) for plan years
9 beginning after August 31, 2009, and be-
10 fore September 1, 2011, the ratio deter-
11 mined under such subparagraph for the
12 preceding plan year of a plan shall be the
13 greater of—

14 “(I) such ratio, as determined
15 without regard to this subsection, or

16 “(II) the ratio for such plan for
17 the plan year beginning after August
18 31, 2007 and before September 1,
19 2008, as determined under rules pre-
20 scribed by the Secretary.

21 “(ii) SPECIAL RULE.—In the case of a
22 plan for which the valuation date is not the
23 first day of the plan year—

24 “(I) clause (i) shall apply to plan
25 years beginning after December 31,

1 2007, and before January 1, 2010,
2 and

3 “(II) clause (i)(II) shall apply
4 based on the last plan year beginning
5 before September 1, 2007, as deter-
6 mined under rules prescribed by the
7 Secretary.

8 “(iii) LIMITATION TO CHARITIES.—
9 This subparagraph shall not apply to any
10 plan unless such plan is maintained exclu-
11 sively by one or more organizations de-
12 scribed in section 501(c)(3).”.

13 (c) EFFECTIVE DATE.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by this section
16 shall apply to plan years beginning after August 31,
17 2009.

18 (2) SPECIAL RULE.—In the case of a plan for
19 which the valuation date is not the first day of the
20 plan year, the amendments made by this section
21 shall apply to plan years beginning after December
22 31, 2008.

1 **Subtitle B—Multiemployer Plans**

2 **SEC. 311. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT**

3 **RULES.**

4 (a) ADJUSTMENTS.—

5 (1) AMENDMENT TO ERISA.—Section 304(b) of
6 the Employee Retirement Income Security Act of
7 1974 (29 U.S.C. 1084(b)) is amended by adding at
8 the end the following new paragraph:

9 “(8) SPECIAL RELIEF RULES.—Notwith-
10 standing any other provision of this subsection—

11 “(A) AMORTIZATION OF NET INVESTMENT
12 LOSSES.—

13 “(i) IN GENERAL.—A multiemployer
14 plan with respect to which the solvency
15 test under subparagraph (C) is met may
16 treat the portion of any experience loss or
17 gain attributable to net investment losses
18 incurred in either or both of the first two
19 plan years ending after August 31, 2008,
20 as an item separate from other experience
21 losses, to be amortized in equal annual in-
22 stallments (until fully amortized) over the
23 period —

24 “(I) beginning with the plan year
25 in which such portion is first recog-

1 nized in the actuarial value of assets,
2 and

3 “(II) ending with the last plan
4 year in the 30-plan year period begin-
5 ning with the plan year in which such
6 net investment loss was incurred.

7 “(ii) COORDINATION WITH EXTEN-
8 SIONS.—If this subparagraph applies for
9 any plan year—

10 “(I) no extension of the amorti-
11 zation period under clause (i) shall be
12 allowed under subsection (d), and

13 “(II) if an extension was granted
14 under subsection (d) for any plan year
15 before the election to have this sub-
16 paragraph apply to the plan year,
17 such extension shall not result in such
18 amortization period exceeding 30
19 years.

20 “(iii) NET INVESTMENT LOSSES.—For
21 purposes of this subparagraph—

22 “(I) IN GENERAL.—Net invest-
23 ment losses shall be determined in the
24 manner prescribed by the Secretary of
25 the Treasury on the basis of the dif-

1 ference between actual and expected
2 returns (including any difference at-
3 tributable to any criminally fraudulent
4 investment arrangement).

5 “(II) CRIMINALLY FRAUDULENT
6 INVESTMENT ARRANGEMENTS.—The
7 determination as to whether an ar-
8 rangement is a criminally fraudulent
9 investment arrangement shall be made
10 under rules substantially similar to
11 the rules prescribed by the Secretary
12 of the Treasury for purposes of sec-
13 tion 165 of the Internal Revenue Code
14 of 1986.

15 “(B) EXPANDED SMOOTHING PERIOD.—

16 “(i) IN GENERAL.—A multiemployer
17 plan with respect to which the solvency
18 test under subparagraph (C) is met may
19 change its asset valuation method in a
20 manner which—

21 “(I) spreads the difference be-
22 tween expected and actual returns for
23 either or both of the first 2 plan years
24 ending after August 31, 2008, over a
25 period of not more than 10 years,

1 both apply for any plan year, the plan shall
2 treat any reduction in unfunded accrued li-
3 ability resulting from the application of
4 this subparagraph as a separate experience
5 amortization base, to be amortized in equal
6 annual installments (until fully amortized)
7 over a period of 30 plan years rather than
8 the period such liability would otherwise be
9 amortized over.

10 “(C) SOLVENCY TEST.—The solvency test
11 under this paragraph is met only if the plan ac-
12 tuary certifies that the plan is projected to have
13 sufficient assets to timely pay expected benefits
14 and anticipated expenditures over the amortiza-
15 tion period, taking into account the changes in
16 the funding standard account under this para-
17 graph.

18 “(D) RESTRICTION ON BENEFIT IN-
19 CREASES.—If subparagraph (A) or (B) apply to
20 a multiemployer plan for any plan year, then, in
21 addition to any other applicable restrictions on
22 benefit increases, a plan amendment increasing
23 benefits may not go into effect during either of
24 the 2 plan years immediately following such
25 plan year unless—

1 “(i) the plan actuary certifies that—

2 “(I) any such increase is paid for
3 out of additional contributions not al-
4 located to the plan immediately before
5 the application of this paragraph to
6 the plan, and

7 “(II) the plan’s funded percent-
8 age and projected credit balances for
9 such 2 plan years are reasonably ex-
10 pected to be at least as high as such
11 percentage and balances would have
12 been if the benefit increase had not
13 been adopted, or

14 “(ii) the amendment is required as a
15 condition of qualification under part I of
16 subchapter D of chapter 1 of the Internal
17 Revenue Code of 1986 or to comply with
18 other applicable law.

19 “(E) REPORTING.—A plan sponsor of a
20 plan to which this paragraph applies shall—

21 “(i) give notice of such application to
22 participants and beneficiaries of the plan,
23 and

24 “(ii) inform the Pension Benefit
25 Guaranty Corporation of such application

1 in such form and manner as the Director
2 of the Pension Benefit Guaranty Corpora-
3 tion may prescribe.”.

4 (2) AMENDMENT TO INTERNAL REVENUE CODE
5 OF 1986.—Section 431(b) is amended by adding at
6 the end the following new paragraph:

7 “(8) SPECIAL RELIEF RULES.—Notwith-
8 standing any other provision of this subsection—

9 “(A) AMORTIZATION OF NET INVESTMENT
10 LOSSES.—

11 “(i) IN GENERAL.—A multiemployer
12 plan with respect to which the solvency
13 test under subparagraph (C) is met may
14 treat the portion of any experience loss or
15 gain attributable to net investment losses
16 incurred in either or both of the first two
17 plan years ending after August 31, 2008,
18 as an item separate from other experience
19 losses, to be amortized in equal annual in-
20 stallments (until fully amortized) over the
21 period —

22 “(I) beginning with the plan year
23 in which such portion is first recog-
24 nized in the actuarial value of assets,
25 and

1 “(II) ending with the last plan
2 year in the 30-plan year period begin-
3 ning with the plan year in which such
4 net investment loss was incurred.

5 “(ii) COORDINATION WITH EXTEN-
6 SIONS.—If this subparagraph applies for
7 any plan year—

8 “(I) no extension of the amorti-
9 zation period under clause (i) shall be
10 allowed under subsection (d), and

11 “(II) if an extension was granted
12 under subsection (d) for any plan year
13 before the election to have this sub-
14 paragraph apply to the plan year,
15 such extension shall not result in such
16 amortization period exceeding 30
17 years.

18 “(iii) NET INVESTMENT LOSSES.—For
19 purposes of this subparagraph—

20 “(I) IN GENERAL.—Net invest-
21 ment losses shall be determined in the
22 manner prescribed by the Secretary
23 on the basis of the difference between
24 actual and expected returns (including
25 any difference attributable to any

1 criminally fraudulent investment ar-
2 rangement).

3 “(II) CRIMINALLY FRAUDULENT
4 INVESTMENT ARRANGEMENTS.—The
5 determination as to whether an ar-
6 rangement is a criminally fraudulent
7 investment arrangement shall be made
8 under rules substantially similar to
9 the rules prescribed by the Secretary
10 for purposes of section 165.

11 “(B) EXPANDED SMOOTHING PERIOD.—

12 “(i) IN GENERAL.—A multiemployer
13 plan with respect to which the solvency
14 test under subparagraph (C) is met may
15 change its asset valuation method in a
16 manner which—

17 “(I) spreads the difference be-
18 tween expected and actual returns for
19 either or both of the first 2 plan years
20 ending after August 31, 2008, over a
21 period of not more than 10 years,

22 “(II) provides that for either or
23 both of the first 2 plan years ending
24 after August 31, 2008, the value of
25 plan assets at any time shall not be

1 less than 80 percent or greater than
2 130 percent of the fair market value
3 of such assets at such time, or

4 “(III) makes both changes de-
5 scribed in subclauses (I) and (II) to
6 such method.

7 “(ii) ASSET VALUATION METHODS.—
8 If this subparagraph applies for any plan
9 year—

10 “(I) the Secretary shall not treat
11 the asset valuation method of the plan
12 as unreasonable solely because of the
13 changes in such method described in
14 clause (i), and

15 “(II) such changes shall be
16 deemed approved by the Secretary
17 under section 302(d)(1) of the Em-
18 ployee Retirement Income Security
19 Act of 1974 and section 412(d)(1).

20 “(iii) AMORTIZATION OF REDUCTION
21 IN UNFUNDED ACCRUED LIABILITY.—If
22 this subparagraph and subparagraph (A)
23 both apply for any plan year, the plan shall
24 treat any reduction in unfunded accrued li-
25 ability resulting from the application of

1 located to the plan immediately before
2 the application of this paragraph to
3 the plan, and

4 “(II) the plan’s funded percent-
5 age and projected credit balances for
6 such 2 plan years are reasonably ex-
7 pected to be at least as high as such
8 percentage and balances would have
9 been if the benefit increase had not
10 been adopted, or

11 “(ii) the amendment is required as a
12 condition of qualification under part I of
13 subchapter D or to comply with other ap-
14 plicable law.

15 “(E) REPORTING.—A plan sponsor of a
16 plan to which this paragraph applies shall—

17 “(i) give notice of such application to
18 participants and beneficiaries of the plan,
19 and

20 “(ii) inform the Pension Benefit
21 Guaranty Corporation of such application
22 in such form and manner as the Director
23 of the Pension Benefit Guaranty Corpora-
24 tion may prescribe.”.

25 (b) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall take effect as of the first day of
3 the first plan year ending after August 31, 2008, ex-
4 cept that any election a plan makes pursuant to this
5 section that affects the plan’s funding standard ac-
6 count for the first plan year ending after August 31,
7 2008, shall be disregarded for purposes of applying
8 the provisions of section 305 of the Employee Re-
9 tirement Income Security Act of 1974 and section
10 432 of the Internal Revenue Code of 1986 to such
11 plan year.

12 (2) RESTRICTIONS ON BENEFIT INCREASES.—
13 Notwithstanding paragraph (1), the restrictions on
14 plan amendments increasing benefits in sections
15 304(b)(8)(D) of such Act and 431(b)(8)(D) of such
16 Code, as added by this section, shall take effect on
17 the date of enactment of this Act.