110TH CONGRESS  
2D Session  

H. R.  

To make technical corrections to the Pension Protection Act of 2006 relating to the Employee Retirement Income Security Act of 1974, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Andrews (for himself and Mr. George Miller of California) introduced the following bill; which was referred to the Committee on

A BILL

To make technical corrections to the Pension Protection Act of 2006 relating to the Employee Retirement Income Security Act of 1974, and for other purposes.

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

3 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the “Pension Protection Act ERISA Amendments of 2008”

5 (b) Table of Contents.—The table of contents is

as follows:
Sec. 1. Short title and table of contents.

TITLE I—WORKER PROTECTION MODIFICATIONS

Sec. 101. Repeal of new rules for termination date in the case of bankruptcy of employer.
Sec. 102. Age requirement for commercial airline pilots.
Sec. 103. Pro-Rata Recovery under ERISA.
Sec. 104. Correction of effective dates for collectively bargained plans.
Sec. 105. Retiree health benefit protections in group health plans.

TITLE II—MULTIEMPLOYER MODIFICATIONS

Sec. 201. Crediting and termination of surcharges in connection with multiemployer plan in critical status upon adoption of rehabilitation plan.
Sec. 202. Schedules required to be provided by multiemployer plans in endangered status.
Sec. 203. Amendments to funding rules for multiemployer plans.

TITLE III—SINGLE-EMPLOYER MODIFICATIONS

Sec. 301. Asset smoothing.
Sec. 302. Prohibited payments.
Sec. 303. Clarification of age discrimination rules in connection with the Young Women’s Christian Association Pension Plan.
Sec. 304. Prohibited transactions exemption for divestment of employer securities.
Sec. 305. Special rule relating to at-risk status for employees offered early retirement in 2006 or 2007.
Sec. 306. Phase-in of funding target.

TITLE IV—SMALL EMPLOYER MODIFICATIONS

Sec. 401. Treatment of employees of certain cooperatives as affiliated service group employees.

TITLE V—PROHIBITED TRANSACTIONS MODIFICATIONS

Sec. 501. Clarification of parties in interest affected by prohibited transaction exemption for block trading.
Sec. 503. Increase in maximum bond amount for plans holding employer securities.
TITLE I—WORKER PROTECTION MODIFICATIONS

SEC. 101. REPEAL OF NEW RULES FOR TERMINATION DATE IN THE CASE OF BANKRUPTCY OF EMPLOYER.

(a) In General.—Section 404 of the Pension Protection Act of 2006 (Public Law 109–280; 120 Stat. 928) (including the amendments made thereby) is hereby repealed.

(b) Effective Date.—Subsection (a) shall be effective as if included in the enactment of the Pension Protection Act of 2006.

SEC. 102. AGE REQUIREMENT FOR COMMERCIAL AIRLINE PILOTS.

(a) Single-Employer Plan Benefits Guaranteed.—Section 4022(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(3)) is amended, in the flush matter following subparagraph (B), by adding at the end the following: “If, at the time of termination of a plan under this title or at the time of the freezing of benefit accruals under a plan pursuant to subsections (a)(1) and (b) of section 402 of the Pension Protection Act of 2006, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attain-
(b) **Aggregate Limit on Benefits Guaranteed.**—Section 4022B(a) of such Act (29 U.S.C. 1322b(a)) is amended by adding at the end the following: “If, at the time of termination of a plan under this title or at the time of the freezing of benefit accruals under a plan pursuant to subsections (a)(1) and (b) of section 402 of the Pension Protection Act of 2006, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining a specified age which is less than age 65, this subsection shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.”.

(e) **Effective Date.**—The amendments made by this section shall apply to benefits payable on or after the date of the enactment of this Act.

**SEC. 103. PRO-RATA RECOVERY UNDER ERISA.**

(a) **In General.**—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—
(1) in subsection (a)(3)(B)(ii), by inserting “subject to subsection (b)(4)” before “the terms of the plan”; and

(2) in subsection (b), by adding at the end the following new paragraph:

“(4)(A) No action by a fiduciary under subsection (a)(3)(B)(ii) to enforce subrogation rights under the terms of the plan which is brought against a third party to seek reimbursement from a recovery by a participant or beneficiary may result in recovery by the fiduciary of an amount that is greater than an amount that bears the same ratio to the recovery by the participant or beneficiary as the amount of the net tort recovery by the participant or beneficiary bears to the total compensatory damages awarded to the participant or beneficiary.

“(B) In an action described in subparagraph (A), any subrogation claim of the fiduciary as calculated pursuant to subparagraph (A) shall be reduced by an amount that is equal to the percentage that the costs of the tort recovery bear to the total sum upon which the costs of the tort recovery are computed.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to actions (described in section 502(b)(4) of the Employee Retirement Income Security Act of 1974 as amended by subsection
sec. 104. correction of effective dates for collectively bargained plans.

(a) periodic pension benefit statements.—

section 508(c)(2) of the pension protection act of 2006 (public law 109–280; 120 stat. 952) is amended—

(1) by striking “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” and inserting “the amendments made by this section shall not apply to plan years beginning before the earlier of”; and

(2) in subparagraph (a)(i), by striking “december 31, 2007” and inserting “december 31, 2006”.

(b) requirements for employer stock diversification.—section 901(c)(2) of the pension protection act of 2006 (public law 109–280; 120 stat. 1032) is amended—

(1) by striking “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” and inserting “the amendments made by this section shall not apply to plan years beginning before the earlier of”; and
(2) in subparagraph (A)(i), by striking “December 31, 2007” and inserting “December 31, 2006”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the enactment of the Pension Protection Act of 2006.

SEC. 105. RETIREE HEALTH BENEFIT PROTECTIONS IN GROUP HEALTH PLANS.

(a) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end a new part 8 as follows:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

“SEC. 801. PROHIBITION AGAINST POST-RETIREMENT REDUCTIONS OF RETIREE HEALTH BENEFITS BY GROUP HEALTH PLANS.

“(a) IN GENERAL.—Notwithstanding that a group health plan described in subsection (b) may contain a provision reserving the general power to amend or terminate the plan or a provision specifically authorizing the plan to make post-retirement reductions in retiree health benefits, it shall be prohibited for any group health plan, whether through amendment or otherwise, to reduce the benefits provided to a retired participant or his or her ben-
beneficiary under the terms of the plan if such reduction of
benefits occurs after the date the participant retired for
purposes of the plan and reduces benefits that were pro-
vided to the participant, or his or her beneficiary, as of
the date the participant retired. Any group health plan
provision which purports to authorize the reduction of
benefits in a manner inconsistent with the foregoing prohi-
bition shall be void as against public policy.

“(b) GROUP HEALTH PLAN.—The term ‘group
health plan’ shall have the same meaning as in section
607(1).

“(c) PROHIBITED REDUCTION OF BENEFITS.—As
used in this section, references to a prohibited reduction
of benefits means any group health plan amendment or
other action which has the effect of—

“(1) canceling, decreasing or limiting the
amount, type, level, or form of any benefit or option
provided prior to the amendment or action;

“(2) imposing or increasing the out-of-pocket
costs a retired participant, or his or her beneficiary,
must pay in order to keep or obtain any benefits
that were provided to the participant or beneficiary
prior to the amendment or action; or

“(3) modifying the manner by which medical
services are delivered under the plan so that after
the amendment or action a retired participant, or
his or her beneficiary, has less ready access to the
delivery of any such medical services than the partic-
ipant or beneficiary had prior to the amendment or
action.

“(d) TREATMENT OF PLAN TERMINATION.—

“(1) IN GENERAL.—Subject to paragraph (2), a
termination of a group health plan shall be treated
as violating the prohibition contained in this section
if, after the termination, the plan sponsor of the ter-
minated plan fails to continue to provide to the par-
ticipants who retired prior to the termination and to
their beneficiaries the same retiree health benefits
that were provided prior to the termination.

“(2) WAIVER.—Paragraph (1) shall not apply
in the case of the termination of a group health plan
if the Secretary issues a waiver under this para-
graph in connection with such termination. The Sec-
retary shall issue such a waiver if and only if the
plan sponsor demonstrates to the satisfaction of the
Secretary, in accordance with regulations prescribed
by the Secretary, that such plan sponsor will be un-
able to continue in business unless such a waiver is
issued.
“(e) CONSENT OR AUTHORIZATION BY PARTICIPANT.—A reduction of benefits shall not be treated as prohibited by this section if such reduction is consented to in writing by any retired participant or is authorized with respect to the retired participant under the terms of one or more agreements which the Secretary finds to be collective bargaining agreements between one or more employee representatives who were representing such participant at the time of the entry into such agreement and one or more employers.

“SEC. 802. ADOPTION BY GROUP HEALTH PLANS OF PROVISION BARRING POST-RETIREMENT REDUCTIONS IN RETIREE HEALTH BENEFITS.

“Every group health plan shall contain a provision which expressly bars the plan, or any fiduciary of the plan, from reducing the benefits provided under the plan to a retired participant, or his or her beneficiary, if such reduction affects the benefits provided to the participant or beneficiary as of the date the participant retired for purposes of the plan and such reduction occurs after the participant’s retirement.

“SEC. 803. RESTORATION BY GROUP HEALTH PLANS OF BENEFITS REDUCED AFTER RETIREMENT.

“(a) IN GENERAL.—The plan sponsor of each group health plan shall provide, in accordance with this section,
the option of benefit restoration to each retired participant that meets the following requirements:

“(1) The retired participant is entitled to benefit coverage under the plan as of the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2007.

“(2) The amount, type, level, or form of any benefits or option provided to the retired participant under the plan as of the date the participant retired was reduced after the participant’s date of retirement. For purposes of the preceding sentence, the term ‘reduced’ has the same meaning as in section 801(c).

“(3) The retired participant has elected to restore benefits under the plan within the restoration period prescribed by subsection (c) and in accordance with such procedures established by the plan pursuant to regulations of the Secretary.

“(b) EXCEPTION FOR CERTAIN PLANS.—In accordance with regulations prescribed by the Secretary, subsection (a) shall not apply to any group health plan with less than 100 participants both on and after the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2007.
“(c) Restoration Period.—The term ‘restoration period’ means the period which—

“(1) begins not later than 1 year after the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2007;

“(2) ends before 2 years from such date, unless extended by the Secretary pursuant to section 804(g); and

“(3) is of no less than 60 days duration.

“(d) Notice Requirements Concerning Restoration of Benefits.—In accordance with regulations prescribed by the Secretary, each group health plan subject to the requirements of subsection (a) shall, within no less than 30 days prior to the commencement of the plan’s restoration of benefits period, provide written notice to each retired participant of the plan who meets the requirements of subsection (a) of the following:

“(1) A description of all benefits the retired participant is entitled to have restored.

“(2) The administrative procedure established under the plan which may be used to submit a claim for the restoration of any benefits.

“(3) An itemization of the value of each benefit the retired participant is entitled to have restored,
as determined in accordance with regulations of the Secretary, and the total value of all such benefits.

“(4) A description of any post-retirement increases in retiree health benefits the retired participant received which the plan sponsor could rescind if the retired participant asserts a claim for the restoration of benefits.

“(5) An itemization of the value of each retiree health benefit the plan sponsor could rescind, as determined in accordance with regulations of the Secretary, and the total value of all such benefits.

“(6) If the plan sponsor has filed an application for a substantial business hardship exemption under section 804, the date such application was filed, the date notice of such application was given to retired participants entitled to submit a claim for the restoration of benefits, and the status of such application as of the date of the notice sent pursuant to this subsection.

“(7) Such other information in such form and detail as may be prescribed by the Secretary to carry out the purposes of this part.

“(e) DEADLINE FOR RESTORATION OF BENEFITS.—Regardless of any extension that may be granted by the Secretary pursuant to section 804(g), all benefits required
to be restored under this section shall be restored within no more than 3 years from the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2007, or the date the plan sponsor files an application for an exemption under section 804, whichever comes last.

“SEC. 804. EXEMPTION FROM RESTORATION OF BENEFITS REQUIREMENTS.

“(a) Application for Exemption.—Any plan sponsor of a group health plan that would sustain substantial business hardship if required to fulfill, in whole or in part, the restoration of benefits requirements contained in section 803, may file an application for an exemption with the Secretary from any or all of such requirements.

“(b) Authority for Waiver or Variance.—In response to an application filed by a plan sponsor pursuant to subsection (a), the Secretary may waive or vary the requirements of section 803 with respect to any or all of such requirements, including postponing for reasonable periods of time the obligation of the plan sponsor to restore reduced benefits, if the Secretary finds that compliance by the plan sponsor with the requirements of section 803 would—

“(1) be adverse to the interests of plan participants in the aggregate;

“(2) not be administratively feasible; and
“(3) cause substantial business hardship to the plan sponsor.

“(c) FACTORS TAKEN INTO ACCOUNT.—For purposes of this section, the factors to be taken into account in determining substantial business hardship shall include (but shall not be limited to) whether—

“(1) the plan sponsor is operating at an economic loss;

“(2) compliance with the restoration of benefits requirements would necessitate substantial future reductions in health benefits provided to participants under the plan or cause a substantial decline in employment with the plan sponsor;

“(3) it is reasonable to expect that the plan will be continued only if a waiver or appropriate variance is granted; and

“(4) the provisions of the Retiree Health Loan Guarantee Program established under section 805 are unavailable to the plan sponsor submitting the application, or, if available, still would not provide a sufficient basis for denying a waiver or variance.

“(d) REQUIREMENT OF SATISFACTORY EVIDENCE.—

“(1) IN GENERAL.—The Secretary shall, before granting a waiver or variance under this section, require each applicant to provide evidence satisfactory
to the Secretary that the applicant has provided
timely written notice of the filing of an application
for such waiver or variance to each retired partici-
pant entitled to submit a claim for the restoration
of benefits under the applicant’s plan.

“(2) Timeliness.—For purposes of paragraph
(1), a written notice shall be considered timely if it
is provided not later than 60 days prior to the date
the plan sponsor files an application for a waiver or
variance under this section.

“(3) Information Required.—The notice re-
ferred to in paragraph (1) shall include information
with respect to the specific relief that will be sought
by the plan sponsor’s application, the period of time
for which relief is sought, and such other relevant
information as the Secretary may prescribe.

“(e) Participation in Proceedings by Retired
Plan Participants.—Each retired participant entitled
to submit a claim for the restoration of benefits within
the meaning of this section shall be provided a reasonable
opportunity to submit comments or otherwise participate
in any proceeding established by the Secretary to deter-
mine whether to grant or deny an application for a waiver
or variance filed by the retired participant’s plan sponsor.
“(f) EXCEPTION FOR CERTAIN APPLICATIONS.—The Secretary shall not be authorized to grant any application for a waiver or variance purporting to satisfy the requirements of subsection (b) if—

“(1) within the 5-year period preceding the date of the plan sponsor’s application the plan sponsor could have transferred excess pension assets to a health benefits account within the meaning of section 420 of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of the Tax Relief Extension Act of 1999) but failed to do so, and the plan sponsor is submitting an application on behalf of such retiree health account; or

“(2) the plan sponsor submitting the application also maintains a fully funded pension plan with respect to which—

“(A) retired participants eligible to submit a claim for the restoration of benefits under section 803 are also eligible to receive ad hoc cost-of-living adjustment benefits;

“(B) the assets of the fully funded pension plan, over the past 5 years preceding the date of application for a waiver or variance, on average have exceeded 120 percent of the plan’s liabilities;
“(C) the plan had no minimum funding requirement to satisfy within the 5 years preceding the date of application for the waiver or variance and the plan sponsor submitting the application made no minimum funding contribution to the fully funded pension plan during such 5-year period; and

“(D) the plan sponsor submitting the application for a waiver or variance failed to provide an ad hoc cost-of-living adjustment benefit from the fully funded pension plan during the 5-year period preceding the date of application for the waiver or variance.

“(g) RUNNING OF RESTORATION PERIOD SUSPENDED.—The submission of an application for a waiver or variance pursuant to this section shall suspend the running of any relevant restoration period as specified in subsection (c). Where appropriate, the Secretary shall direct the reopening of any relevant restoration period upon the final conclusion of proceedings to determine whether an application should be granted or denied.

“SEC. 805. ESTABLISHMENT OF EMERGENCY RETIREE HEALTH LOAN GUARANTEE PROGRAM.

“(a) DEFINITIONS.—For purposes of this section—
“(1) BOARD.—The term ‘Board’ means the Emergency Retiree Health Loan Guarantee Board established under subsection (c).

“(2) PROGRAM.—The term ‘Program’ means the Emergency Retiree Health Loan Guarantee Program established under subsection (b).

“(3) ELIGIBLE PLAN SPONSOR.—The term ‘eligible plan sponsor’ means any plan sponsor as defined in section 3(16)(B) that maintains a group health plan subject to the retiree health benefits restoration requirements of section 803.

“(b) ESTABLISHMENT OF EMERGENCY RETIREE HEALTH LOAN GUARANTEE PROGRAM.—There is established the Retiree Health Loan Guarantee Program, to be administered by the Board, the purpose of which is to provide loan guarantees to eligible plan sponsors in accordance with this section.

“(c) RETIREE HEALTH LOAN GUARANTEE BOARD MEMBERSHIP.—There is established a Retiree Health Loan Guarantee Board, which shall be composed of—

“(1) the Secretary of Labor, who shall serve as Chairman of the Board;

“(2) the Secretary of Commerce;

“(3) the Secretary of the Treasury;
“(4) the Secretary of Health and Human Services; and

“(5) the Chairman of the Council of Economic Advisers.

“(d) RETIREE HEALTH LOAN GUARANTEE PROGRAM.—

“(1) AUTHORITY.—The Program may guarantee loans provided by private banking and investment institutions to eligible plan sponsors for purposes of assisting such plan sponsors to meet their obligations under section 803. Such loan guarantees shall be provided to the extent provided in advance in appropriation Acts pursuant to paragraph (4) and only in accordance with the procedures, rules, and regulations established by the Board.

“(2) TOTAL GUARANTEE LIMIT.—The aggregate amount of loans guaranteed and outstanding at any time under this section may not exceed $5,000,000,000.

“(3) INDIVIDUAL GUARANTEE LIMIT.—The aggregate amount of loans guaranteed under this section with respect to a single eligible plan sponsor may not exceed $5,000,000.

“(4) ADDITIONAL COSTS.—For the additional cost of loans guaranteed under this subsection, in-
including the costs of modifying the loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), there is authorized to be appropriated $200,000,000, to remain available until expended.

“(e) REQUIREMENTS FOR LOAN GUARANTEES.—A loan guarantee may be issued under this section upon application to the Board by an eligible plan sponsor pursuant to an agreement to provide a loan to that eligible plan sponsor by a private bank or investment company, if the Board determines that—

“(1) credit is not otherwise available to that eligible plan sponsor under reasonable terms and conditions sufficient to meet its financing needs with respect to the restoration of retiree health benefits, as reflected in the financial and business plans of that eligible plan sponsor;

“(2) the prospective earning power of that eligible plan sponsor, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

“(3) the loan to be guaranteed bears interest at a rate determined by the Board to be reasonable, taking into account the current average yield on out-
standing obligations of the United States with remain-
ing periods of maturity comparable to the ma-

turity of such loan;

“(4) the loan to be guaranteed will materially assist that eligible plan sponsor to discharge its obli-
gation to comply with the restoration of benefits re-
quirements contained in section 803; and

“(5) the eligible plan sponsor has agreed to an audit by the Government Accountability Office prior to the issuance of the loan guarantee and annually while any such guaranteed loan is outstanding.

“(f) TERMS AND CONDITIONS OF LOAN GUAR-
ANTEE.—

“(1) LOAN DURATION.—All loans guaranteed under this section shall be payable in full not later than December 31, 2015, and the terms and conditions of each such loan shall provide that the loan may not be amended or any provision thereof waived without the consent of the Board.

“(2) LOAN SECURITY.—Any commitment to issue a loan guarantee under this section shall contain such affirmative and negative covenants and other protective provisions that the Board determines are appropriate.
“(3) FEES.—An eligible plan sponsor receiving a guarantee under this section shall pay a fee in an amount equal to 0.5 percent of the outstanding principal balance of the guaranteed loan to the Department of the Treasury.

“(g) REPORTS TO CONGRESS.—The Secretary of Labor shall submit annually to each House of the Congress a full report of the activities of the Board under this section during 2008 and 2009, and annually thereafter during such period as any loan guaranteed under this section is outstanding. Such report shall be submitted not later than January 31 of each year (beginning in 2008).

“(h) SALARIES AND ADMINISTRATIVE EXPENSES.—For necessary expenses to administer the Program, there is authorized to be appropriated to the Department of Labor (and to be transferred to the Office of the Assistant Secretary for Pension and Welfare Benefits Administration) $10,000,000, to remain available until expended.

“(i) TERMINATION OF GUARANTEE AUTHORITY.—The authority of the Board to make commitments to guarantee any loan under this section shall terminate on December 31, 2013.

“(j) REGULATORY ACTION.—The Board shall issue such final procedures, rules, and regulations as may be
necessary to carry out this section not later than 90 days after the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2007. In no event shall the Board issue a procedure, rule, or regulation which authorizes it to approve or deny any application for a loan guarantee in more than 270 days after receipt of such application.

“(k) Emergency Designation.—The entire amount made available to carry out this section—

“(1) is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)); and

“(2) shall be available only to the extent that an official budget request that includes designation of the entire amount as an emergency requirement (as defined in the Balanced Budget and Emergency Deficit Control Act of 1985) is transmitted by the President to the Congress.

“SEC. 806. EFFECT ON OTHER CLAIMS.

“(a) Other Claims Unaffected.—Nothing contained in this part shall be construed to alter, impair, or eliminate any claim for retiree health benefits based on conduct alleged to violate the terms of a group health plan, any provision of this Act (other than this part), or both,
regardless of whether such conduct occurred prior to, on, or after, the effective date of this part.

“(b) Other Causes of Action Not Authorized.—Unless the conduct giving rise to a claim for retiree health benefits is alleged to violate the provisions of this part, nothing contained in this part shall be construed to authorize any other cause of action for the recovery of retiree health benefits.

“SEC. 807. REGULATIONS.

“The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this part. The Secretary may promulgate any interim final rules as the Secretary deems are appropriate to carry out this part.

“SEC. 808. ENFORCEMENT.

“The enforcement provisions of sections 501 and 502 shall be applicable to this part.”.

(2) Civil Penalty Section.—Section 502(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(e)) is amended—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

“(9) The Secretary may assess a civil penalty of not more than $1,000 for each separate violation of section
801, 802, or 803 by any person individually with respect to each participant or beneficiary aggrieved by such violation.”.

(3) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 734 the following new items:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

“Sec. 801. Prohibition against post-retirement reductions of retiree health benefits by group health plans.
“Sec. 802. Adoption by group health plans of provision barring post-retirement reductions in retiree health benefits.
“Sec. 803. Restoration by group health plans of benefits reduced after retirement.
“Sec. 804. Exemption from restoration of benefits requirements.
“Sec. 806. Effect on other claims.
“Sec. 807. Regulations.
“Sec. 808. Enforcement.”.

(b) SEPARABILITY OF PROVISIONS.—The provisions of section 509 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1139) shall be applicable to this section and the amendments made thereby.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.
TITLE II—MULTIEMPLOYER MODIFICATIONS

SEC. 201. CREDITING AND TERMINATION OF SURCHARGES IN CONNECTION WITH MULTIEMPLOYER PLAN IN CRITICAL STATUS UPON ADOPTION OF REHABILITATION PLAN.

(a) Amendments to ERISA.—Section 305(e)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(7)) is amended by adding at the end the following new subparagraph:

“(F) Special rule in the case of sufficient contribution rates.—In any case in which the plan sponsor of a multiemployer plan which is in critical status and with respect to which the rehabilitation plan has been adopted pursuant to this subsection determines that the terms of a collective bargaining agreement (or other agreement pursuant to which the employer contributes) provide for a contribution rate increase that became effective during the 24-month period before the initial critical year and determines that such agreement includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i) (as modified under paragraph (3)(B))—
“(i) surcharges payable by an employer under this paragraph in connection with such critical status shall cease to be payable by the employer with respect to employees covered by such agreement on and after the date of such determination by the plan sponsor, and

“(ii) any such surcharges which have been paid by an employer in connection with such critical status with respect to such employees covered under such agreement shall be credited against contributions payable by such employer under such schedule.”.

(b) Conforming Amendments to the Code.— Section 432(e)(7) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sub-paragraph:

“(F) Special rule in the case of sufficient contribution rates.—In any case in which the plan sponsor of a multiemployer plan which is in critical status and with respect to which the rehabilitation plan has been adopted pursuant to this subsection determines that the terms of a collective bargaining agreement (or
other agreement pursuant to which the employer contributes) provide for a contribution rate increase that became effective during the 24-month period before the initial critical year and determines that such agreement includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i) (as modified under paragraph (3)(B))—

“(i) surcharges payable by an employer under this paragraph in connection with such critical status shall cease to be payable by the employer with respect to employees covered by such agreement on and after the date of such determination by the plan sponsor, and

“(ii) any such surcharges which have been paid by an employer in connection with such critical status with respect to such employees covered under such agreement shall be credited against contributions payable by such employer under such schedule.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made on or after the date of the enactment of this Act.
SEC. 202. SCHEDULES REQUIRED TO BE PROVIDED BY MULTIELLPLOYER PLANS IN ENDANGERED STATUS.


(1) by striking “bargaining parties 1 or more schedules” and all that follows through “including—” and inserting “bargaining parties—”;

(2) in subclause (I), by inserting after “(I)” the following: “a schedule showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multimeployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including”; and

(3) by striking subclause (II) and inserting the following:

“(II) a schedule which would consist of a combination of benefit modifications and contribution increases, and”.

(b) Conforming Amendments to the Code.—Section 432(c)(1)(B)(i) of the Internal Revenue Code of 1986 is amended—
(1) by striking “bargaining parties 1 or more schedules” and all that follows through “including—” and inserting “bargaining parties—”;

(2) in subclause (I), by inserting after “(I)” the following: “a schedule showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multimeployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including”; and

(3) by striking subclause (II) and inserting the following:

“(II) a schedule which would consist of a combination of benefit modifications and contribution increases, and”.

(c) Effective Date.—The amendments made by this section shall apply with respect to funding improvement plans adopted on or after the date of the enactment of this Act.

SEC. 203. AMENDMENTS TO FUNDING RULES FOR MULTI-EMPLOYER PLANS.

(a) Amendment Related to Sections 201 and 211.—
(1) In General.—Section 201(b)(2)(A) of the Pension Protection Act of 2006 (Public Law 109-280; 120 Stat. 867) is amended by striking “has not used” and inserting “has not adopted, or ceased using.”.

(2) Effective Date.—The amendment made by this subsection shall apply as if included in the enactment of section 201 of the Pension Protection Act of 2006.

(b) Amendments Related to Sections 202 and 212.—

(1) Amendments to the Employee Retirement Income Security Act of 1974.—


(B) Section 305(b)(3)(D) of such Act (29 U.S.C. 1085(b)(3)(D)) is amended by striking “The Secretary” in clause (iii) and inserting “The Secretary of the Treasury, in consultation with the Secretary”.

(C) Section 305(c)(7) of such Act (29 U.S.C. 1085(c)(7)) is amended—
(i) by striking “to agree on” and all that follows in subparagraph (A)(ii) and inserting “to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,”, and

(ii) by striking subparagraph (B) and inserting the following new subparagraph:

“(B) DATE OF IMPLEMENTATION.—The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.”, and

(iii) by adding at the end the following new subparagraph:

“(C) FAILURE TO MAKE SCHEDULED CONTRIBUTIONS.—Any failure to make a contribution under a schedule of contribution rates provided under this paragraph shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.”.

(D) Section 305(e) of such Act (29 U.S.C. 1085(e)) is amended—

(i) in paragraph (3)(C)—
(I) by striking all that follows “to adopt a” in clause (i)(II) and inserting “to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),”,

(II) by striking clause (ii) and inserting the following new clause:

“(ii) DATE OF IMPLEMENTATION.—

The date specified in this clause is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.”, and

(III) by adding at the end the following new clause:

“(iii) FAILURE TO MAKE SCHEDULED CONTRIBUTIONS.—Any failure to make a contribution under a schedule of contribution rates provided under this subsection shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.”,

(ii) in paragraph (4)—
(I) by striking “the date of” in subparagraph (A)(ii), and

(II) by striking “and taking” in subparagraph (B) and inserting “but taking”,

(iii) in paragraph (6)—

(I) by striking “paragraph (1)(B)(i)” and inserting “the last sentence of paragraph (1)”, and

(II) by striking “established” and inserting “establish”,

(iv) in paragraph (8)(C)(iii)—

(I) by striking “the Secretary” in subclause (I) and inserting “the Secretary of the Treasury, in consultation with the Secretary”, and

(II) by striking “Secretary” in the last sentence and inserting “Secretary of the Treasury”, and

(v) by striking “an employer’s withdrawal liability” in paragraph (9)(B) and inserting “the allocation of unfunded vested benefits to an employer”.

(E) Section 305(f)(2)(A)(i) of such Act (29 U.S.C. 1085(f)(2)(A)(i)) is amended by in-
serting “to a participant or beneficiary whose
annuity starting date (as defined in section
205(h)(2)) occurs after such date,” after the
comma at the end.

(F) Section 305(g) of such Act (29 U.S.C.
1085(g)) is amended by inserting “under sub-
section (e)” after “funding improvement plan”
the first place it appears.

(G) Section 302(b)(3) of such Act (29
U.S.C. 1082(b)(3)) is amended by striking “the
plan adopts” and inserting “the plan sponsor
adopts”.

(H) Section 502(e)(2) of such Act (29
U.S.C. 1132(e)(2)) is amended by striking
“101(b)(4)” and inserting “101(b)(1)”.

(I) Section 502(e)(8)(A) of such Act (29
U.S.C. 1132(c)(8)(A)) is amended by inserting
“plan” after “multiemployer”.

(2) CONFORMING AMENDMENTS TO THE INTER-

NAL REVENUE CODE OF 1986.—

(A) Section 432(b)(3)(C) of the Internal
Revenue Code of 1986 is amended by striking
“section 101(b)(4)” and inserting “section
101(b)(1)”.

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(B) Section 432(b)(3)(D)(iii) of such Code is amended by striking “The Secretary of Labor” and inserting “The Secretary, in consultation with the Secretary of Labor”.

(C) Section 432(c) of such Code is amended—

(i) in paragraph (3), by striking “section 304(d)” in subparagraph (A)(ii) and inserting “section 431(d)”, and

(ii) in paragraph (7)—

(I) by striking “to agree on” and all that follows in subparagraph (A)(ii) and inserting “to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor.”, and

(II) by striking subparagraph (B) and inserting the following new subparagraph:

“(B) DATE OF IMPLEMENTATION.—The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.”.
(D) Section 432(e) of such Code is amended—

(i) in paragraph (3)(C)—

(I) by striking all that follows “to adopt a’’ in clause (i)(II) and inserting “to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),’’, and

(II) by striking clause (ii) and inserting the following new clause:

“(ii) DATE OF IMPLEMENTATION.—

The date specified in this clause is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.’’,

(ii) in paragraph (4)—

(I) by striking “the date of” in subparagraph (A)(ii), and

(II) by striking “and taking” in subparagraph (B) and inserting “but taking’’,

(iii) in paragraph (6)—
(I) by striking “paragraph (1)(B)(i)” and inserting “the last sentence of paragraph (1)”, and

(II) by striking “established” and inserting “establish”,

(iv) in paragraph (8)—

(I) by striking “section 204(g)” in subparagraph (A)(i) and inserting “section 411(d)(6)”,

(II) by inserting “of the Employee Retirement Income Security Act of 1974” after “4212(a)” in subparagraph (C)(i)(II),

(III) by striking “the Secretary of Labor” in subparagraph (C)(iii)(I) and inserting “the Secretary, in consultation with the Secretary of Labor”, and

(IV) by striking “the Secretary of Labor” in the last sentence of subparagraph (C)(iii) and inserting “the Secretary”, and

(v) by striking “an employer’s withdrawal liability” in paragraph (9)(B) and
inserting “the allocation of unfunded vested benefits to an employer”.

(E) Section 432(f)(2)(A)(i) of such Code is amended—

(i) by striking “section 411(b)(1)(A)” and inserting “section 411(a)(9)”, and

(ii) by inserting “to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after such date,” after the comma at the end.

(F) Section 432(g) of such Code is amended by inserting “under subsection (c)” after “funding improvement plan” the first place it appears.

(G) Section 432(i) of such Code is amended—

(i) by striking “section 412(a)” in paragraph (3) and inserting “section 431(a)”, and

(ii) by striking paragraph (9) and inserting the following new paragraph:

“(9) PLAN SPONSOR.—For purposes of this section, section 431, and section 4971(g)—

“(A) IN GENERAL.—The term ‘plan sponsor’ means, with respect to any multiemployer
plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

“(B) SPECIAL RULE FOR SECTION 404(c) PLANS.—In the case of a plan described in section 404(c) (or a continuation of such plan), such term means the bargaining parties described in paragraph (1).”.

(H) Section 412(b)(3) of such Code is amended by striking “the plan adopts” and inserting “the plan sponsor adopts”.

(I) Section 4971(g)(4) of such Code is amended—

(i) in subparagraph (B)(ii), by striking “first day of” and inserting “day following the close of”, and

(ii) by striking clause (ii) of subparagraph (C) and inserting the following new clause:

“(ii) PLAN SPONSOR.—For purposes of clause (i), the term ‘plan sponsor’ has the meaning given such term by section 432(i)(9).”.

(3) Amendments to the Pension Protection Act of 2006.—

(A) Section 212(b)(2) of the Pension Protection Act of 2006 (Public Law 109-280; 120 Stat. 917) is amended by striking “Section 4971(c)(2) of such Code” and inserting “Section 4971(e)(2) of such Code”.

(B) Section 212(e)(1) of such Act (Public Law 109-280; 120 Stat. 917) is amended by inserting “, except that the amendments made by subsection (b) shall apply to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year” before the period at the end.

(C) Section 212(e)(2) of such Act (Public Law 109-280; 120 Stat. 917) is amended by striking “section 305(b)(3) of the Employee Retirement Income Security Act of 1974” and inserting “section 432(b)(3) of the Internal Revenue Code of 1986”.

(4) Effective dates.—

(A) The amendments made by paragraphs (1) and (2) shall take effect as if included in
the enactment of sections 202 and 212, respectively, of the Pension Protection Act of 2006.

(B) The amendments made by paragraph (3) shall take effect as if included in the enactment of section 212 of the Pension Protection Act of 2006.

TITLE III—SINGLE-EMPLOYER MODIFICATIONS

SEC. 301. ASSET SMOOTHING.

(a) Amendment to ERISA.—The last sentence of section 303(g)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(g)(3)(B)) is amended to read as follows: “Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan’s actuary on the basis of an assumed earnings rate specified by the actuary but not in excess of the third segment rate applicable under subsection (h)(2)(C)(iii)), as specified by the Secretary of the Treasury.”.

(b) Conforming Amendment to Internal Revenue Code.—The last sentence of section 430(g)(3)(B) of the Internal Revenue Code of 1986 is amended to read as follows: “Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan’s actuary on the basis of an assumed
earnings rate specified by the actuary but not in excess
of the third segment rate applicable under subsection
(h)(2)(C)(iii)), as specified by the Secretary.”.

(c) EFFECTIVE DATE.—The amendments made by
subsections (a) and (b) shall apply as if included in the
enactment of sections 102 and 112, respectively, of the
Pension Protection Act of 2006.

SEC. 302. PROHIBITED PAYMENTS.

(a) AMENDMENT TO ERISA.—Paragraph (3) of sec-
tion 206(g) of the Employee Retirement Income Security
Act of 1974 (29 U.S.C. 1056(g)(3)) is amended—

(1) by striking subparagraph (C) and redesig-
nating subparagraphs (D) and (E) as subparagraphs
(C) and (D), respectively; and

(2) by striking subparagraph (A) and inserting
the following:

“(A) FUNDING PERCENTAGE LESS THAN
80 PERCENT.—A defined benefit plan which is
a single-employer plan shall provide that, in any
case in which the plan’s adjusted funding target
attainment percentage for a plan year is less
than 80 percent, the plan may not pay any pro-
hibited payment after the valuation date for the
plan year to the extent the amount of the pay-
ment exceeds the product of—

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“(i) the amount of the payment which could be made without regard to this subsection; multiplied by

“(ii) the plan’s adjusted funding target attainment percentage for the plan year.”.

(b) CONFORMING AMENDMENT TO INTERNAL REVENUE CODE.—Subsection (d) of section 436 of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraph (3) and redesignating paragraphs (4) and (5) as subparagraphs (3) and (4), respectively; and

(2) by striking paragraph (1) and inserting the following:

“(1) FUNDING PERCENTAGE LESS THAN 80 PERCENT.—A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan’s adjusted funding target attainment percentage for a plan year is less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the product of—

“(A) the amount of the payment which could be made without regard to this subsection; multiplied by
“(B) the plan’s adjusted funding target attainment percentage for the plan year.”.

(c) **Effective Date.**—The amendments made by subsections (a) and (b) shall apply as if included in the enactment of sections 103 and 113, respectively, of the Pension Protection Act of 2006.

**SEC. 303. CLARIFICATION OF AGE DISCRIMINATION RULES IN CONNECTION WITH THE YOUNG WOMEN’S CHRISTIAN ASSOCIATION PENSION PLAN.**

(a) **Purpose.**—The purpose of this section is to clarify the age discrimination rules under section 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 and section 4(i)(1) of the Age Discrimination in Employment Act of 1967, as they relate, in connection with benefits provided under the Young Women’s Christian Association Pension Plan, to periods prior to June 29, 2005, during which violations of such rules are alleged to have occurred in civil actions commenced on or after April 25, 2007.

(b) **Clarification of Age Discrimination Rules.**—In the case of any civil action which—

(1) is commenced on or after April 25, 2007,

and

(2) alleges a violation of section 204(b)(1)(H) of the Employee Retirement Income Security Act of
1974 (29 U.S.C. 1054(b)(1)(H)) or section 4(i)(1)
of the Age Discrimination in Employment Act of
1967 (29 U.S.C. 623(i)(1)) occurring before June
29, 2005, with respect to any benefit provided under
the Young Women’s Christian Association Pension
Plan,
such sections 204(b)(1)(H) and 4(i)(1) shall be applied
as if paragraph (5) of section 204(b) of the Employee Re-
tirement Income Security Act of 1974 (as added by section
701(a)(1) of the Pension Protection Act of 2006 (29
U.S.C. 1054(b)(5); 120 Stat. 981) and paragraph (10) of
section 4(i) of the Age Discrimination in Employment Act
of 1967 (29 U.S.C. 623(i)(10); 120 Stat. 998) applied to
any period in which such alleged violation occurred.

(c) YOUNG WOMEN’S CHRISTIAN ASSOCIATION PEN-
SION PLAN.—For purposes of this section, the term
“Young Women’s Christian Association Pension Plan”
means the defined benefit plan (as defined in section 3(35)
of the Employee Retirement Income Security Act of 1974)
established on January 1, 1926, and maintained by the
Young Women’s Christian Association Retirement Fund,
a corporation created by an Act of the State of New York
which became law on April 12, 1924.
SEC. 304. PROHIBITED TRANSACTIONS EXEMPTION FOR DIVESTMENT OF EMPLOYER SECURITIES.

(a) Amendment to the Employee Retirement Income Security Act of 1974.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

“(21) Prohibited Transactions Exemption for Divestment of Employer Securities.—A transaction involving the sale of employer securities held in the account of a plan participant under the plan, if—

“(A) the proceeds from the sale are invested in the account,

“(B) the notice requirements of section 404(c)(5)(B) are met in connection with the plan with respect to the plan year during which the transaction occurs,

“(C) under the plan—

“(i) the participant is treated as having elected to effect the transaction, in the absence of a specific election by the participant not to have the transaction effected, and

“(ii) participants are provided a reasonable period of time after the notice provided pursuant to section 404(c)(5)(B) with respect to each
plan year and before the beginning of such plan
year to make such a specific election, and
“(D) the transaction is consistent with regula-
tions which shall be promulgated by the Secretary
and which shall take into account the importance of
diversifying the investment of retirement account as-
sets as a plan participant nears retirement age.”.

(b) Conforming Amendments to the Internal
Revenue Code of 1986.—Subsection (d) of section
4975 of the Internal Revenue Code of 1986 (relating to
exemptions) is amended by striking “or” at the end of
paragraph (22), by striking the period at the end of para-
graph (23) and inserting “, or”, and by adding at the
end the following new paragraph:
“(24) Prohibited Transactions Exemption
for Divestment of Employer Securities.—A
transaction involving the sale of employer securities
held in the account of a plan participant under the
plan, if—
“(A) the proceeds from the sale are in-
vested in the account,
“(B) the notice requirements of section
404(c)(5)(B) of the Employee Retirement In-
come Security Act of 1974 are met in connec-
tion with the plan with respect to the plan year
during which the transaction occurs,

“(C) under the plan—

“(i) the participant is treated as hav-

ing elected to effect the transaction, in the

absence of a specific election by the partici-

pant not to have the transaction effected,

and

“(ii) participants are provided a rea-

sonable period of time after the notice pro-

vided pursuant to section 404(c)(5)(B) of

the Employee Retirement Income Security

Act of 1974 with respect to each plan year

and before the beginning of such plan year

to make such a specific election, and

“(D) the transaction is consistent with reg-

ulations promulgated by the Secretary of Labor

pursuant to section 408(b)(21)(D) of the Em-

ployee Retirement Income Security Act of

1974.”.

(c) ISSUANCE OF REGULATIONS.—The Secretary of

Labor shall issue initial final regulations pursuant to sec-

tion 408(b)(21)(D) of the Employee Retirement Income

Security Act of 1974 (as added by this section) not later

than 180 days after the date of the enactment of this Act.
(d) **Effective Date.**—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

**SEC. 305. SPECIAL RULE RELATING TO AT-RISK STATUS FOR EMPLOYEES OFFERED EARLY RETIREMENT IN 2006 OR 2007.**

(a) **Amendments to ERISA.**—Section 303(i)(4)(C) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(i)(4)(C)(i)) is amended—

1. in the heading, by inserting “OR 2007” after “2006”;
2. in clause (i)(II), by striking “2010” and inserting “2011”; and
3. in clause (i)(III), by inserting “or 2007” after “2006” the first place it appears, and by striking “2006” the second place it appears and inserting “2007”.

(b) **Conforming Amendments to the Internal Revenue Code of 1986.**—Section 430(i)(4)(C) of the Internal Revenue Code of 1986 (relating to special rule for employees offered early retirement in 2006) is amended—

1. in the heading, by inserting “OR 2007” after “2006”;
(2) in clause (i)(II), by striking “2010” and insert- 
ing “2011”; and

(3) in clause (ii)(III), by inserting “or 2007” 
after “2006” the first place it appears, and by strik-
ing “2006” the second place it appears and insert-
ing “2007”.

(c) EFFECTIVE DATE.—The amendments made by 
subsections (a) and (b) shall apply as if included in the 
enactment of sections 102 and 112, respectively, of the 
Pension Protection Act of 2006.

SEC. 306. PHASE-IN OF FUNDING TARGET.

(a) AMENDMENT TO ERISA.—Subparagraph (B) of 
section 303(c)(5) of the Employee Retirement Income Se-
curity Act of 1974 (as amended by this Act) is further 
amended—

(1) by striking clause (iii) and redesignating 
clause (iv) as clause (iii); and

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

“(i) IN GENERAL.—Except as pro-
vided in clause (iii), in the case of plan 
years beginning after the applicable fund-
ing pre-effective date year (as defined in 
section 21(i)(1) of the Pension Protection 
Act Amendments of 2008) and before the
calendar year that is three years after the applicable funding effective date year (as defined in section 21(i)(2) of the Pension Protection Act Amendments of 2007), only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for purposes of paragraph (3)(A) and subparagraph (A).”.

(b) Conforming Amendment to Internal Revenue Code.—Subparagraph (B) of section 430(c)(5) of the Internal Revenue Code of 1986 (as amended by this Act) is further amended—

(1) by striking clause (iii) and redesignating clause (iv) as clause (iii); and

(2) by striking clause (i) and inserting the following:

“(i) In general.—Except as provided in clause (iii), in the case of plan years beginning after the applicable funding pre-effective date year (as defined in section 21(i)(1) of the Pension Protection Act Amendments of 2008) and before the calendar year that is three years after the applicable funding effective date year (as
defined in section 21(i)(2) of the Pension Protection Act Amendments of 2007), only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for purposes of paragraph (3)(A) and subparagraph (A).”.

(c) Effective Date.—The amendments made by subsections (a) and (b) shall apply as if included in the enactment of sections 102 and 112, respectively, of the Pension Protection Act of 2006.

TITLE IV—SMALL EMPLOYER MODIFICATIONS

SEC. 401. TREATMENT OF EMPLOYEES OF CERTAIN CO-OPERATIVES AS AFFILIATED SERVICE GROUP EMPLOYEES.

(a) In General.—Section 210 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1060) is amended by adding at the end the following new subsection:

“(f) Treatment of Employees of Certain Co-operatives as Affiliated Service Group Employees.—

“(1) In General.—For purposes of sections 202, 203, and 204—
“(A) all employees of all shareholders of a corporation which is an affiliated service group shall be treated as employed by such corporation as a single employer, and

“(B) a plan maintained by a corporation which is an affiliated service group shall be treated as a single-employer plan maintained by the corporation.

“(2) AFFILIATED SERVICE GROUP.—For purposes of this subsection, the term ‘affiliated service group’ means a corporation if—

“(A) the corporation has at least 21 shareholders and operates on a cooperative basis subject to the provisions of subchapter T of chapter 1 of the Internal Revenue Code of 1986,

“(B) all shareholders of the corporation engage in business operations using the same four-digit North American Industrial Classification System (NAIC) code root, and

“(C) the corporation assumes responsibility pursuant to a written agreement with each shareholder, with respect to all worksite employees providing services to such shareholder, for the provision of employee benefits.”.
(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning on or after the date of the enactment of this Act.

TITLE V—PROHIBITED TRANSACTIONS MODIFICATIONS

SEC. 501. CLARIFICATION OF PARTIES IN INTEREST AFFECTED BY PROHIBITED TRANSACTION EXEMPTION FOR BLOCK TRADING.

(a) AMENDMENT TO ERISA.—Section 408(b)(15)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(15)(A)) is amended—

(1) by striking “a party in interest (other than a fiduciary described in section 3(21)(A)) with respect to a plan” and inserting “a party in interest (other than a fiduciary described in section 3(21)(A) who has investment discretion or provides investment advice with respect to the transaction)”; and

(2) in clause (i), by inserting “directed by a fiduciary described in section 3(21)(A)” after “block trade”.

(b) CONFORMING AMENDMENT TO THE CODE.—Paragraph (18) of section 4975(d) of the Internal Revenue Code of 1986 (relating to exemptions from prohibited transactions) is amended—
(1) by striking “a party in interest (other than a fiduciary described in subsection (e)(3)(B))” and inserting “a disqualified person (other than a fiduciary who has investment discretion or provides investment advice with respect to the transaction)”;

and

(2) in subparagraph (A), by inserting “directed by a fiduciary described in subsection (e)(3)(B)” after “block trade”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the enactment of section 601 of the Pension Protection Act of 2006.

SEC. 502. CLARIFICATION OF SCOPE OF PROHIBITED TRANSACTION EXEMPTION FOR ELECTRONIC COMMUNICATION NETWORKS.

(a) AMENDMENTS TO ERISA.—Section 408(b)(16) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended—

(1) in subparagraph (A), by inserting “exchange, automated quotation system,” after “electronic communication network,”;

(2) in subparagraph (D), by striking “if the party in interest has an ownership interest” and inserting “if the fiduciary directing the transaction
has an ownership interest of at least 10 percent by
value”; and

(3) in subparagraph (E), by inserting after
“(E)” the following: “if the fiduciary directing the
transaction has an ownership interest of at least 10
percent by value in the system or venue described in
subparagraph (A),”.

(b) CONFORMING AMENDMENTS TO CODE.—Para-
graph (19) of section 4975(d) of the Internal Revenue
Code of 1986 (relating to exemptions from prohibited
transactions) is amended—

(1) in subparagraph (A), by inserting “ex-
change, automated quotation system,” after “elec-
tronic communication network,”;

(2) in subparagraph (D), by striking “if the
party in interest has an ownership interest” and in-
serting “if the fiduciary directing the transaction
has an ownership interest of at least 10 percent by
value”; and

(3) in subparagraph (E), by inserting after
“(E)” the following: “if the fiduciary directng the
transaction has an ownership interest of at least 10
percent by value in the system or venue described in
subparagraph (A),”.
(c) **Effective Date.**—The amendments made by this section shall apply as if included in the enactment of section 611 of the Pension Protection Act of 2006.

**Sec. 503. Increase in Maximum Bond Amount for Plans Holding Employer Securities.**

(a) **In General.**—Section 412(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112(a)) is amended by striking the last sentence and inserting the following: “In any case in which a dedicated portfolio of plan assets is primarily invested in employer securities (within the meaning of section 407(d)(1)), if such employer securities have been contributed directly by the plan sponsor (or an affiliate (within the meaning of section 407(d)(7)[408(g)(11)(B)]) of the plan sponsor) or the decision to purchase such employer securities has been made by an employee of the plan sponsor (or of such an affiliate of the plan sponsor), this subsection shall be applied in requiring each person who handles such plan assets to be bonded by substituting in this subsection ‘$1,000,000’ for ‘$500,000’ each place it appears.”.

(b) **Effective Date.**—The amendment made by this section shall apply as if included in the enactment of section 622 of the Pension Protection Act of 2006.