

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.