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 RELIEF

3 Subtitle A—Single Employer Plans

4 SEC. 301. EXTENDED PERIOD FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS TO AMORTIZE CERTAIN SHORTFALL AMORTIZATION BASES.

5 (a) AMENDMENTS TO ERISA.—
(1) **IN GENERAL.**—Paragraph (2) of section 303(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(e)) is amended by adding at the end the following subparagraph:

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

“(i) **IN GENERAL.**—If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ‘election year’), then, notwithstanding subparagraphs (A) and (B)—

“(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

“(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment
determined under the applicable clause for that year for that base.

“(ii) 2 PLUS 7 AMORTIZATION SCHEDULE.—The shortfall amortization installments determined under this clause are—

“(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

“(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

“(iii) 15-YEAR AMORTIZATION.—The shortfall amortization installments determined under this subparagraph are the
amounts necessary to amortize the short-fall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

“(iv) Election.—

“(I) In general.—The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

“(II) Amortization schedule.—Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years,
the plan sponsor must elect the same
schedule for both years.

“(III) Other rules.—Such
election shall be made at such time,
and in such form and manner, as
shall be prescribed by the Secretary of
the Treasury, and may be revoked
only with the consent of the Secretary
of the Treasury. The Secretary of the
Treasury shall, before granting a rev-
ocation request, provide the Pension
Benefit Guaranty Corporation an op-
portunity to comment on the condi-
tions applicable to the treatment of
any portion of the election year short-
fall amortization base that remains
unamortized as of the revocation date.

“(v) Eligible plan year.—For pur-
poses of this subparagraph, the term ‘eligi-
ble plan year’ means any plan year begin-
that a plan year shall only be treated as an
eligible plan year if the due date under
subsection (j)(1) for the payment of the
minimum required contribution for such
plan year occurs on or after the date of the enactment of this subparagraph.

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

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

“(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

“(vii) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).”.

(2) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—Section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following paragraph:
“(7) Increases in alternate required installments in cases of excess compensation or extraordinary dividends or stock redemptions.—

“(A) In general.—If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

“(B) Total installments limited to shortfall base.—Subject to rules prescribed by the Secretary of the Treasury, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—

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

“(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

“(C) Installment Acceleration Amount.—For purposes of this paragraph—

“(i) In general.—The term ‘installment acceleration amount’ means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

“(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus
“(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

“(ii) ANNUAL LIMITATION.—The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

“(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

“(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).
“(iii) Carryover of excess installment acceleration amounts.—

“(I) In general.—If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

“(II) Cap to apply.—If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.
“(III) LIMITATION ON YEARS TO WHICH AMOUNTS CARRIED FOR.—No amount shall be carried under sub-clause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

“(IV) ORDERING RULES.—For purposes of applying sub-clause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

“(D) EXCESS EMPLOYEE COMPENSATION.—For purposes of this paragraph—

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

“(I) the aggregate amount includible in income under chapter 1 of the Internal Revenue Code of 1986 for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

“(II) $1,000,000.

“(ii) Amounts set aside for non-qualified deferred compensation.— If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A of such Code) of the plan sponsor, then, for purposes of clause (i), the amount of
such assets shall be treated as remunera-
tion of the employee includible in income
for the calendar year unless such amount
is otherwise includible in income for such
year. An amount to which the preceding
sentence applies shall not be taken into ac-
count under this paragraph for any subse-
quent calendar year.

“(iii) ONLY REMUNERATION FOR cer-
tain post-2009 services counted.—Rem-
uneration shall be taken into account
under clause (i) only to the extent attrib-
utable to services performed by the em-
ployee for the plan sponsor after February

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

“(I) IN GENERAL.—There shall
not be taken into account under
clause (i)(I) any amount includible in
income with respect to the granting
after February 28, 2010, of service
recipient stock (within the meaning of
section 409A of the Internal Revenue
Code of 1986) that, upon such grant,
is subject to a substantial risk of forfeiture (as defined under section 83(c)(1) of such Code) for at least 5 years from the date of such grant.

"(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation provide for the application of this clause in the case of a person other than a corporation.

"(v) OTHER EXCEPTIONS.—The following amounts includible in income shall not be taken into account under clause (i)(I):

"(I) COMMISSIONS.—Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

"(II) CERTAIN PAYMENTS UNDER EXISTING CONTRACTS.—Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a
written binding contract that was in
effect on March 1, 2010, and which
was not modified in any material re-
spect before such remuneration is
paid.

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

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

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

“(II) the cost-of-living adjust-
ment determined under section 1(f)(3)
of such Code for the calendar year,
determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $1,000, such increase shall be rounded to the next lowest multiple of $1,000.

“(E) EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.—

“(i) IN GENERAL.—The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

“(I) the adjusted net income (within the meaning of section 4043) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization,
“(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

“(ii) Only certain post-2009 dividends and redemptions counted.—For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) Exception for intra-group dividends.—Dividends paid by one member of a controlled group (as defined in section 302(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) Exception for certain redemptions.—Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of
employment of an employee or shareholder, shall not be taken into account under clause (i).

“(v) Exception for certain preferred stock.—

“(I) In general.—Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor’s income, and interest accrues on any unpaid dividends with respect to such stock.

“(II) Applicable preferred stock.—For purposes of subclause (I), the term ‘applicable preferred stock’ means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of this title).

“(F) Other definitions and rules.—

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

“(ii) RESTRICTION PERIOD.—The term ‘restriction period’ means, with respect to any election year—

“(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

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

“(iii) ELECTIONS FOR MULTIPLE PLANS.—If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary of the Treasury shall provide rules for the application of this paragraph to such plans, including
rules for the ratable allocation of any instalment acceleration amount among such plans on the basis of each plan’s relative reduction in the plan’s shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

“(iv) MERGERS AND ACQUISITIONS.—
The Secretary of the Treasury shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).”.

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

(A) in subsection (c)(1), by striking “the shortfall amortization bases for such plan year and each of the 6 preceding plan years” and inserting “any shortfall amortization base which has not been fully amortized under this subsection”, and

(B) in subsection (j)(3), by adding at the end the following:
“(F) QUARTERLY CONTRIBUTIONS NOT TO INCLUDE CERTAIN INCREASED CONTRIBUTIONS.—Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).”.

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

(1) IN GENERAL.—Paragraph (2) of section 430(c) is amended by adding at the end the following subparagraph:

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

“(i) IN GENERAL.—If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and paragraph (7) referred to as an ‘election year’), then, notwithstanding subparagraphs (A) and (B)—

“(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and
“(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

“(ii) 2 PLUS 7 AMORTIZATION SCHEDULE.—The shortfall amortization installments determined under this clause are—

“(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

“(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the
election year in level annual install-
ments over such last 7 plan years
(using the segment rates under sub-
paragraph (C) for the election year).

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

“(iv) ELECTION.—

“(I) IN GENERAL.—The plan
sponsor of a plan may elect to have
this subparagraph apply to not more
than 2 eligible plan years with respect
to the plan, except that in the case of
a plan described in section 106 of the
Pension Protection Act of 2006, the
plan sponsor may only elect to have
this subparagraph apply to a plan
year beginning in 2011.
“(II) Amortization schedule.—Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

“(III) Other rules.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary, and may be revoked only with the consent of the Secretary. The Secretary shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

“(v) Eligible plan year.—For purposes of this subparagraph, the term ‘eligi-
that a plan year shall only be treated as an eligible plan year if the due date under
subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

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

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

“(II) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

“(vii) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.—For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).”
(2) INCREASES IN REQUIRED CONTRIBUTIONS IF EXCESS COMPENSATION PAID.—Section 430(c) is amended by adding at the end the following paragraph:

“(7) INCREASES IN ALTERNATE REQUIRED INSTALLMENTS IN CASES OF EXCESS COMPENSATION OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMPTIONS.—

“(A) IN GENERAL.—If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

“(B) TOTAL INSTALLMENTS LIMITED TO SHORTFALL BASE.—Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—
“(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

“(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

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

“(i) IN GENERAL.—The term ‘installment acceleration amount’ means, with respect to any plan year in a restriction period with respect to an election year, the sum of—
“(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

“(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

“(ii) ANNUAL LIMITATION.—The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

“(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

“(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over
years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

“(iii) Carryover of excess installment acceleration amounts.—

“(I) In general.—If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

“(II) Cap to apply.—If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount
representing such excess shall be
treated as an installment acceleration
amount with respect to the next suc-
ceeding plan year.

“(III) LIMITATION ON YEARS TO
which amounts carried for.—No
amount shall be carried under sub-
clause (I) or (II) to a plan year which
begins after the first plan year fol-
lowing the last plan year in the re-
striction period (or after the second
plan year following such last plan year
in the case of an election year with re-
spect to which 15-year amortization
was elected under paragraph (2)(D)).

“(IV) ORDERING RULES.—For
purposes of applying subclause (II),
installment acceleration amounts for
the plan year (determined without re-
gard to any carryover under this
clause) shall be applied first against
the limitation under clause (ii) and
then carryovers to such plan year
shall be applied against such limita-
tion on a first-in, first-out basis.
“(D) Excess Employee Compensation.—For purposes of this paragraph—

“(i) In General.—The term ‘excess employee compensation’ means, with respect to any employee for any plan year, the excess (if any) of—

“(I) the aggregate amount includible in income under this chapter for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

“(II) $1,000,000.

“(ii) Amounts Set Aside for Non-Qualified Deferred Compensation.—If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan
(as defined in section 409A) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

“(iii) Only remuneration for certain post-2009 services counted.—Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

“(iv) Exception for certain equity payments.—

“(I) In general.—There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of
section 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1)) for at least 5 years from the date of such grant.

“(II) Secretarial Authority.—The Secretary may by regulation provide for the application of this clause in the case of a person other than a corporation.

“(v) Other Exceptions.—The following amounts includible in income shall not be taken into account under clause (i)(I):

“(I) Commissions.—Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

“(II) Certain Payments Under Existing Contracts.—Any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation
rights payable or granted under a
written binding contract that was in
effect on March 1, 2010, and which
was not modified in any material re-
spect before such remuneration is
paid.

“(vi) **Self-employed individual**
treated as employee.—The term ‘em-
ployee’ includes, with respect to a calendar
year, a self-employed individual who is
treated as an employee under section
401(c) for the taxable year ending during
such calendar year, and the term ‘com-
pensation’ shall include earned income of
such individual with respect to such self-
employment.

“(vii) **Indexing of amount.**—In the
case of any calendar year beginning after
2010, the dollar amount under clause
(i)(II) shall be increased by an amount
equal to—

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

“(II) the cost-of-living adjust-
ment determined under section 1(f)(3)
for the calendar year, determined by substituting ‘calendar year 2009’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of $1,000, such increase shall be rounded to the next lowest multiple of $1,000.

“(E) EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.—

“(i) IN GENERAL.—The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

“(I) the adjusted net income (within the meaning of section 4043 of the Employee Retirement Income Security Act of 1974) of the plan sponsor for the preceding plan year, determined without regard to any re-
duction by reason of interest, taxes, depreciation, or amortization, or

“(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

“(ii) Only certain post-2009 dividends and redemptions counted.—For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) Exception for intra-group dividends.—Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) Exception for certain redemptions.—Redemptions that are made pursuant to a plan maintained with respect
to employees, or that are made on account
of the death, disability, or termination of
employment of an employee or shareholder,
shall not be taken into account under
clause (i).

“(v) Exception for certain preferred stock.—

“(I) In general.—Dividends
and redemptions with respect to applicable preferred stock shall not be
taken into account under clause (i) to
the extent that dividends accrue with
respect to such stock at a specified
rate in all events and without regard
to the plan sponsor’s income, and inter-

“(II) Applicable preferred stock.—For purposes of subclause
(I), the term ‘applicable preferred
stock’ means preferred stock which
was issued before March 1, 2010 (or
which was issued after such date and
is held by an employee benefit plan
subject to the provisions of title I of

“(F) Other definitions and rules.—

For purposes of this paragraph—

“(i) Plan sponsor.—The term ‘plan sponsor’ includes any member of the plan sponsor’s controlled group (as defined in section 412(d)(3)).

“(ii) Restriction period.—The term ‘restriction period’ means, with respect to any election year—

“(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

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

“(iii) Elections for multiple plans.—If a plan sponsor makes elections
under paragraph (2)(D) with respect to 2 or more plans, the Secretary shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan’s relative reduction in the plan’s shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

“(iv) Mergers and acquisitions.—The Secretary shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).”.

(3) Conforming amendments.—Section 430 is amended—

(A) in subsection (c)(1), by striking “the shortfall amortization bases for such plan year and each of the 6 preceding plan years” and inserting “any shortfall amortization base which
has not been fully amortized under this subsection”, and

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

“(F) QUARTERLY CONTRIBUTIONS NOT TO INCLUDE CERTAIN INCREASED CONTRIBUTIONS.—Subparagraph (D) shall be applied without regard to any increase under subsection (e)(7).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2007.

SEC. 302. APPLICATION OF EXTENDED AMORTIZATION PERIOD TO PLANS SUBJECT TO PRIOR LAW FUNDING RULES.

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

“SEC. 107. APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE.

“(a) IN GENERAL.—If the plan sponsor of a plan to which section 104, 105, or 106 of this Act applies elects to have this section apply for any eligible plan year (in
this section referred to as an ‘election year’), section 302
of the Employee Retirement Income Security Act of 1974
and section 412 of the Internal Revenue Code of 1986
(as in effect before the amendments made by this subtitle
and subtitle B) shall apply to such year in the manner
described in subsection (b) or (c), whichever is specified
in the election. All references in this section to ‘such Act’
or ‘such Code’ shall be to such Act or such Code as in
effect before the amendments made by this subtitle and
subtitle B.

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

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

“(2) CALCULATION OF DEFICIT REDUCTION
CONTRIBUTION.—For purposes of applying section
302(d) of such Act and section 412(l) of such Code
to a plan to which such sections apply (after taking
into account paragraph (1))—

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

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

“(c) Application of 15-Year Amortization.—In
the case of an election year to which this subsection ap-
plies, for purposes of applying section 302(d) of such Act
and section 412(l) of such Code—

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

“(A) the annual installments payable in
each year if the increased unfunded new liabil-
ity for such plan year were amortized over 15 years, using an interest rate equal to the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, to

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

“(2) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

“(d) ELECTION.—

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

“(2) AMORTIZATION SCHEDULE.—Such election shall specify whether the rules under subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elects to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.
“(3) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

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

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

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

“(3) INCREASED UNFUNDED NEW LIABILITY.—The term ‘increased unfunded new liability’ means, with respect to a year, the excess (if any) of the unfunded new liability over the amount of unfunded new liability determined as if the value of the plan’s assets determined under subsection 302(e)(2) of
such Act and section 412(c)(2) of such Code equaled the product of the current liability of the plan for the year multiplied by the funded current liability percentage (as defined in section 302(d)(8)(B) of such Act and 412(l)(8)(B) of such Code) of the plan for the second plan year preceding the first election year of such plan.

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

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

(1) by striking “eligible cooperative plan” wherever it appears in subsections (a) and (b) and inserting “eligible cooperative plan or an eligible charity plan”, and

(2) by adding at the end the following new subsection:

“(d) ELIGIBLE CHARITY PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer (determined without regard to section 414(c) of the Internal Revenue Code) and 100 per-
section 501(c)(3) of such Code.”.

(c) Effective Date.—

(1) In General.—The amendment made by subsection (a) shall take effect as if included in the Pension Protection Act of 2006.

(2) Eligible Charity Plan.—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2007, except that a plan sponsor may elect to apply such amendments to plan years beginning after December 31, 2008. Any such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

SEC. 303. LOOKBACK FOR CERTAIN BENEFIT RESTRICTIONS.

(a) In General.—

(1) Amendment to ERISA.—Section 206(g)(9) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

“(D) Special rule for certain years.—Solely for purposes of any applicable provision—
47

“(i) In general.—For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

“(I) such percentage, as determined without regard to this subparagraph, or

“(II) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

“(ii) Special rule.—In the case of a plan for which the valuation date is not the first day of the plan year—

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

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

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

“(I) paragraph (3), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary of the Treasury, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

“(II) paragraph (4).”.

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

“(3) SPECIAL RULE FOR CERTAIN YEARS.—

Solely for purposes of any applicable provision—
“(A) IN GENERAL.—For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

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

“(ii) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary.

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

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

“(ii) subparagraph (A)(ii) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.

“(C) APPLICABLE PROVISION.—For purposes of this paragraph, the term ‘applicable provision’ means—
“(i) subsection (d), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

“(ii) subsection (e).”.

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

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section
shall apply to plan years beginning on or after October 1, 2008.

(2) Special rule.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007.

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

(a) Amendment to ERISA.—Paragraph (3) of section 303(f) of the Employee Retirement Income Security Act of 1974 is amended by adding the following at the end thereof:

“(D) Special rule for certain years of plans maintained by charities.—

“(i) In general.—For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year shall be the greater of—

“(I) such ratio, as determined without regard to this subparagraph, or
"(II) the ratio for such plan for the plan year beginning after August 31, 2007, and before September 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

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

"(I) clause (i) shall apply to plan years beginning after December 31, 2008, and before January 1, 2011, and

"(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary of the Treasury.

"(iii) LIMITATION TO CHARITIES.—This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3) of the Internal Revenue Code of 1986."
(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Paragraph (3) of section 430(f) of the Internal Revenue Code of 1986 is amended by adding the following at the end thereof:

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

“(i) IN GENERAL.—For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

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

“(II) the ratio for such plan for the plan year beginning after August 31, 2007 and before September 1, 2008, as determined under rules prescribed by the Secretary.

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

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

and

“(II) clause (i)(II) shall apply

based on the last plan year beginning

before September 1, 2007, as deter-

mined under rules prescribed by the

Secretary.

“(iii) LIMITATION TO CHARITIES.—

This subparagraph shall not apply to any

plan unless such plan is maintained exclu-

sively by one or more organizations de-

scribed in section 501(c)(3).”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in para-

graph (2), the amendments made by this section

shall apply to plan years beginning after August 31,

2009.

(2) SPECIAL RULE.—In the case of a plan for

which the valuation date is not the first day of the

plan year, the amendments made by this section

shall apply to plan years beginning after December

31, 2008.
Subtitle B—Multiemployer Plans

SEC. 311. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT RULES.

(a) ADJUSTMENTS.—

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

“(8) SPECIAL RELIEF RULES.—Notwithstanding any other provision of this subsection—

“(A) AMORTIZATION OF NET INVESTMENT LOSSES.—

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

“(I) beginning with the plan year in which such portion is first recog-
56

nized in the actuarial value of assets,
and

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

“(ii) COORDINATION WITH EXTEN-
sions.—If this subparagraph applies for
any plan year—

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

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

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

“(I) IN GENERAL.—Net invest-
ment losses shall be determined in the
manner prescribed by the Secretary of
the Treasury on the basis of the dif-
ference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

“(II) CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.—The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary of the Treasury for purposes of section 165 of the Internal Revenue Code of 1986.

“(B) EXPANDED SMOOTHING PERIOD.—

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

“(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,
“(II) provides that for either or both of the first 2 plan years ending after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

“(III) makes both changes described in subclauses (I) and (II) to such method.

“(ii) Asset Valuation Methods.— If this subparagraph applies for any plan year—

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

“(II) such changes shall be deemed approved by such Secretary under section 302(d)(1) and section 412(d)(1) of such Code.

“(iii) Amortization of Reduction in Unfunded Accrued Liability.—If this subparagraph and subparagraph (A)
both apply for any plan year, the plan shall
treat any reduction in unfunded accrued li-
ability resulting from the application of
this subparagraph as a separate experience
amortization base, to be amortized in equal
annual installments (until fully amortized)
over a period of 30 plan years rather than
the period such liability would otherwise be
amortized over.

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

“(D) Restriction on Benefit In-
creases.—If subparagraph (A) or (B) apply to
a multiemployer plan for any plan year, then, in
addition to any other applicable restrictions on
benefit increases, a plan amendment increasing
benefits may not go into effect during either of
the 2 plan years immediately following such
plan year unless—
“(i) the plan actuary certifies that—

“(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

“(II) the plan’s funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

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

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

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

“(ii) inform the Pension Benefit Guaranty Corporation of such application
in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.”.

(2) Amendment to Internal Revenue Code of 1986.—Section 431(b) is amended by adding at the end the following new paragraph:

“(8) Special relief rules.—Notwithstanding any other provision of this subsection—

“(A) Amortization of net investment losses.—

“(i) In general.—A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period—

“(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and
“(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

“(ii) COORDINATION WITH EXTENSIONS.—If this subparagraph applies for any plan year—

“(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

“(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

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

“(I) IN GENERAL.—Net investment losses shall be determined in the manner prescribed by the Secretary on the basis of the difference between actual and expected returns (including any difference attributable to any
(II) CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.—The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

(B) EXPANDED SMOOTHING PERIOD.—

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

(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

(II) provides that for either or both of the first 2 plan years ending after August 31, 2008, the value of plan assets at any time shall not be
less than 80 percent or greater than
130 percent of the fair market value
of such assets at such time, or

“(III) makes both changes de-
dcribed in subclauses (I) and (II) to
such method.

“(ii) Asset valuation methods.—
If this subparagraph applies for any plan
year—

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

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

“(iii) Amortization of reduction
in unfunded accrued liability.—If
this subparagraph and subparagraph (A)
both apply for any plan year, the plan shall
treat any reduction in unfunded accrued li-
ability resulting from the application of
this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

“(C) Solvency Test.—The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

“(D) Restriction on Benefit Increases.—If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

“(i) the plan actuary certifies that—

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

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

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

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

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

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

(b) EFFECTIVE DATES.—
(1) IN GENERAL.—The amendments made by this section shall take effect as of the first day of the first plan year ending after August 31, 2008, except that any election a plan makes pursuant to this section that affects the plan’s funding standard account for the first plan year ending after August 31, 2008, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to such plan year.

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