

1 section 412(e) of the Internal Revenue Code of 1986
2 with respect to any application filed with the Sec-
3 retary of the Treasury on or before June 30, 2005,
4 the extension (and any modification thereof) shall be
5 applied and administered under the rules of such
6 sections as in effect before the enactment of this
7 Act, including the use of the rate of interest deter-
8 mined under section 6621(b) of such Code.

9 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**
10 **EMPLOYER PLANS IN ENDANGERED OR CRIT-**
11 **ICAL STATUS.**

12 (a) IN GENERAL.—Part 3 of subtitle B of title I of
13 the Employee Retirement Income Security Act of 1974 (as
14 amended by the preceding provisions of this Act) is
15 amended by inserting after section 304 the following new
16 section:

17 “ADDITIONAL FUNDING RULES FOR MULTIEmployer
18 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

19 “SEC. 305. (a) GENERAL RULE.—For purposes of
20 this part, in the case of a multiemployer plan in effect
21 on July 16, 2006—

22 “(1) if the plan is in endangered status—

23 “(A) the plan sponsor shall adopt and im-
24 plement a funding improvement plan in accord-
25 ance with the requirements of subsection (c),
26 and

1 “(B) the requirements of subsection (d)
2 shall apply during the funding plan adoption
3 period and the funding improvement period,
4 and

5 “(2) if the plan is in critical status—

6 “(A) the plan sponsor shall adopt and im-
7 plement a rehabilitation plan in accordance with
8 the requirements of subsection (e), and

9 “(B) the requirements of subsection (f)
10 shall apply during the rehabilitation plan adop-
11 tion period and the rehabilitation period.

12 “(b) DETERMINATION OF ENDANGERED AND CRIT-
13 ICAL STATUS.—For purposes of this section—

14 “(1) ENDANGERED STATUS.—A multiemployer
15 plan is in endangered status for a plan year if, as
16 determined by the plan actuary under paragraph
17 (3), the plan is not in critical status for the plan
18 year and, as of the beginning of the plan year, ei-
19 ther—

20 “(A) the plan’s funded percentage for such
21 plan year is less than 80 percent, or

22 “(B) the plan has an accumulated funding
23 deficiency for such plan year, or is projected to
24 have such an accumulated funding deficiency
25 for any of the 6 succeeding plan years, taking

1 into account any extension of amortization peri-
2 ods under section 304(d).

3 For purposes of this section, a plan shall be treated
4 as in seriously endangered status for a plan year if
5 the plan is described in both subparagraphs (A) and
6 (B).

7 “(2) CRITICAL STATUS.—A multiemployer plan
8 is in critical status for a plan year if, as determined
9 by the plan actuary under paragraph (3), the plan
10 is described in 1 or more of the following subpara-
11 graphs as of the beginning of the plan year:

12 “(A) A plan is described in this subpara-
13 graph if—

14 “(i) the funded percentage of the plan
15 is less than 65 percent, and

16 “(ii) the sum of—

17 “(I) the fair market value of plan
18 assets, plus

19 “(II) the present value of the
20 reasonably anticipated employer con-
21 tributions for the current plan year
22 and each of the 6 succeeding plan
23 years, assuming that the terms of all
24 collective bargaining agreements pur-
25 suant to which the plan is maintained

1 for the current plan year continue in
2 effect for succeeding plan years,
3 is less than the present value of all non-
4 forfeitable benefits projected to be payable
5 under the plan during the current plan
6 year and each of the 6 succeeding plan
7 years (plus administrative expenses for
8 such plan years).

9 “(B) A plan is described in this subpara-
10 graph if—

11 “(i) the plan has an accumulated
12 funding deficiency for the current plan
13 year, not taking into account any extension
14 of amortization periods under section
15 304(d), or

16 “(ii) the plan is projected to have an
17 accumulated funding deficiency for any of
18 the 3 succeeding plan years (4 succeeding
19 plan years if the funded percentage of the
20 plan is 65 percent or less), not taking into
21 account any extension of amortization peri-
22 ods under section 304(d).

23 “(C) A plan is described in this subpara-
24 graph if—

1 “(i)(I) the plan’s normal cost for the
2 current plan year, plus interest (deter-
3 mined at the rate used for determining
4 costs under the plan) for the current plan
5 year on the amount of unfunded benefit li-
6 abilities under the plan as of the last date
7 of the preceding plan year, exceeds

8 “(II) the present value of the reason-
9 ably anticipated employer and employee
10 contributions for the current plan year,

11 “(ii) the present value, as of the be-
12 ginning of the current plan year, of non-
13 forfeitable benefits of inactive participants
14 is greater than the present value of non-
15 forfeitable benefits of active participants,
16 and

17 “(iii) the plan has an accumulated
18 funding deficiency for the current plan
19 year, or is projected to have such a defi-
20 ciency for any of the 4 succeeding plan
21 years, not taking into account any exten-
22 sion of amortization periods under section
23 304(d).

24 “(D) A plan is described in this subpara-
25 graph if the sum of—

1 “(i) the fair market value of plan as-
2 sets, plus

3 “(ii) the present value of the reason-
4 ably anticipated employer contributions for
5 the current plan year and each of the 4
6 succeeding plan years, assuming that the
7 terms of all collective bargaining agree-
8 ments pursuant to which the plan is main-
9 tained for the current plan year continue
10 in effect for succeeding plan years,

11 is less than the present value of all benefits pro-
12 jected to be payable under the plan during the
13 current plan year and each of the 4 succeeding
14 plan years (plus administrative expenses for
15 such plan years).

16 “(3) ANNUAL CERTIFICATION BY PLAN ACTU-
17 ARY.—

18 “(A) IN GENERAL.—Not later than the
19 90th day of each plan year of a multiemployer
20 plan, the plan actuary shall certify to the Sec-
21 retary of the Treasury and to the plan spon-
22 sor—

23 “(i) whether or not the plan is in en-
24 dangered status for such plan year and

1 whether or not the plan is or will be in
2 critical status for such plan year, and

3 “(ii) in the case of a plan which is in
4 a funding improvement or rehabilitation
5 period, whether or not the plan is making
6 the scheduled progress in meeting the re-
7 quirements of its funding improvement or
8 rehabilitation plan.

9 “(B) ACTUARIAL PROJECTIONS OF ASSETS
10 AND LIABILITIES.—

11 “(i) IN GENERAL.—In making the de-
12 terminations and projections under this
13 subsection, the plan actuary shall make
14 projections required for the current and
15 succeeding plan years of the current value
16 of the assets of the plan and the present
17 value of all liabilities to participants and
18 beneficiaries under the plan for the current
19 plan year as of the beginning of such year.
20 The actuary’s projections shall be based on
21 reasonable actuarial estimates, assump-
22 tions, and methods that, except as pro-
23 vided in clause (iii), offer the actuary’s
24 best estimate of anticipated experience
25 under the plan. The projected present

1 value of liabilities as of the beginning of
2 such year shall be determined based on the
3 most recent of either—

4 “(I) the actuarial statement re-
5 quired under section 103(d) with re-
6 spect to the most recently filed annual
7 report, or

8 “(II) the actuarial valuation for
9 the preceding plan year.

10 “(ii) DETERMINATIONS OF FUTURE
11 CONTRIBUTIONS.—Any actuarial projection
12 of plan assets shall assume—

13 “(I) reasonably anticipated em-
14 ployer contributions for the current
15 and succeeding plan years, assuming
16 that the terms of the one or more col-
17 lective bargaining agreements pursu-
18 ant to which the plan is maintained
19 for the current plan year continue in
20 effect for succeeding plan years, or

21 “(II) that employer contributions
22 for the most recent plan year will con-
23 tinue indefinitely, but only if the plan
24 actuary determines there have been no
25 significant demographic changes that

1 would make such assumption unrea-
2 sonable.

3 “(iii) PROJECTED INDUSTRY ACTIV-
4 ITY.—Any projection of activity in the in-
5 dustry or industries covered by the plan,
6 including future covered employment and
7 contribution levels, shall be based on infor-
8 mation provided by the plan sponsor,
9 which shall act reasonably and in good
10 faith.

11 “(C) PENALTY FOR FAILURE TO SECURE
12 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
13 ure of the plan’s actuary to certify the plan’s
14 status under this subsection by the date speci-
15 fied in subparagraph (A) shall be treated for
16 purposes of section 502(c)(2) as a failure or re-
17 fusal by the plan administrator to file the an-
18 nual report required to be filed with the Sec-
19 retary under section 101(b)(4).

20 “(D) NOTICE.—

21 “(i) IN GENERAL.—In any case in
22 which it is certified under subparagraph
23 (A) that a multiemployer plan is or will be
24 in endangered or critical status for a plan
25 year, the plan sponsor shall, not later than

1 30 days after the date of the certification,
2 provide notification of the endangered or
3 critical status to the participants and bene-
4 ficiaries, the bargaining parties, the Pen-
5 sion Benefit Guaranty Corporation, and
6 the Secretary.

7 “(ii) PLANS IN CRITICAL STATUS.—If
8 it is certified under subparagraph (A) that
9 a multiemployer plan is or will be in crit-
10 ical status, the plan sponsor shall include
11 in the notice under clause (i) an expla-
12 nation of the possibility that—

13 “(I) adjustable benefits (as de-
14 fined in subsection (e)(8)) may be re-
15 duced, and

16 “(II) such reductions may apply
17 to participants and beneficiaries
18 whose benefit commencement date is
19 on or after the date such notice is
20 provided for the first plan year in
21 which the plan is in critical status.

22 “(iii) MODEL NOTICE.—The Secretary
23 shall prescribe a model notice that a multi-
24 employer plan may use to satisfy the re-
25 quirements under clause (ii).

1 “(c) FUNDING IMPROVEMENT PLAN MUST BE
2 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
3 STATUS.—

4 “(1) IN GENERAL.—In any case in which a
5 multiemployer plan is in endangered status for a
6 plan year, the plan sponsor, in accordance with this
7 subsection—

8 “(A) shall adopt a funding improvement
9 plan not later than 240 days following the re-
10 quired date for the actuarial certification of en-
11 dangered status under subsection (b)(3)(A),
12 and

13 “(B) within 30 days after the adoption of
14 the funding improvement plan—

15 “(i) shall provide to the bargaining
16 parties 1 or more schedules showing re-
17 vised benefit structures, revised contribu-
18 tion structures, or both, which, if adopted,
19 may reasonably be expected to enable the
20 multiemployer plan to meet the applicable
21 benchmarks in accordance with the fund-
22 ing improvement plan, including—

23 “(I) one proposal for reductions
24 in the amount of future benefit accru-
25 als necessary to achieve the applicable

1 benchmarks, assuming no amend-
2 ments increasing contributions under
3 the plan (other than amendments in-
4 creasing contributions necessary to
5 achieve the applicable benchmarks
6 after amendments have reduced fu-
7 ture benefit accruals to the maximum
8 extent permitted by law), and

9 “(II) one proposal for increases
10 in contributions under the plan nec-
11 essary to achieve the applicable bench-
12 marks, assuming no amendments re-
13 ducing future benefit accruals under
14 the plan, and

15 “(ii) may, if the plan sponsor deems
16 appropriate, prepare and provide the bar-
17 gaining parties with additional information
18 relating to contribution rates or benefit re-
19 ductions, alternative schedules, or other in-
20 formation relevant to achieving the appli-
21 cable benchmarks in accordance with the
22 funding improvement plan.

23 For purposes of this section, the term ‘applica-
24 ble benchmarks’ means the requirements appli-

1 cable to the multiemployer plan under para-
2 graph (3) (as modified by paragraph (5)).

3 “(2) EXCEPTION FOR YEARS AFTER PROCESS
4 BEGINS.—Paragraph (1) shall not apply to a plan
5 year if such year is in a funding plan adoption pe-
6 riod or funding improvement period by reason of the
7 plan being in endangered status for a preceding plan
8 year. For purposes of this section, such preceding
9 plan year shall be the initial determination year with
10 respect to the funding improvement plan to which it
11 relates.

12 “(3) FUNDING IMPROVEMENT PLAN.—For pur-
13 poses of this section—

14 “(A) IN GENERAL.—A funding improve-
15 ment plan is a plan which consists of the ac-
16 tions, including options or a range of options to
17 be proposed to the bargaining parties, formu-
18 lated to provide, based on reasonably antici-
19 pated experience and reasonable actuarial as-
20 sumptions, for the attainment by the plan dur-
21 ing the funding improvement period of the fol-
22 lowing requirements:

23 “(i) INCREASE IN PLAN’S FUNDING
24 PERCENTAGE.—The plan’s funded percent-
25 age as of the close of the funding improve-

1 ment period equals or exceeds a percentage
2 equal to the sum of—

3 “(I) such percentage as of the
4 beginning of such period, plus

5 “(II) 33 percent of the difference
6 between 100 percent and the percent-
7 age under subclause (I).

8 “(ii) AVOIDANCE OF ACCUMULATED
9 FUNDING DEFICIENCIES.—No accumulated
10 funding deficiency for any plan year during
11 the funding improvement period (taking
12 into account any extension of amortization
13 periods under section 304(d)).

14 “(B) SERIOUSLY ENDANGERED PLANS.—
15 In the case of a plan in seriously endangered
16 status, except as provided in paragraph (5),
17 subparagraph (A)(i)(II) shall be applied by sub-
18 stituting ‘20 percent’ for ‘33 percent’.

19 “(4) FUNDING IMPROVEMENT PERIOD.—For
20 purposes of this section—

21 “(A) IN GENERAL.—The funding improve-
22 ment period for any funding improvement plan
23 adopted pursuant to this subsection is the 10-
24 year period beginning on the first day of the

1 first plan year of the multiemployer plan begin-
2 ning after the earlier of—

3 “(i) the second anniversary of the
4 date of the adoption of the funding im-
5 provement plan, or

6 “(ii) the expiration of the collective
7 bargaining agreements in effect on the due
8 date for the actuarial certification of en-
9 dangered status for the initial determina-
10 tion year under subsection (b)(3)(A) and
11 covering, as of such due date, at least 75
12 percent of the active participants in such
13 multiemployer plan.

14 “(B) SERIOUSLY ENDANGERED PLANS.—
15 In the case of a plan in seriously endangered
16 status, except as provided in paragraph (5),
17 subparagraph (A) shall be applied by sub-
18 stituting ‘15-year period’ for ‘10-year period’.

19 “(C) COORDINATION WITH CHANGES IN
20 STATUS.—

21 “(i) PLANS NO LONGER IN ENDAN-
22 GERED STATUS.—If the plan’s actuary cer-
23 tifies under subsection (b)(3)(A) for a plan
24 year in any funding plan adoption period
25 or funding improvement period that the

1 plan is no longer in endangered status and
2 is not in critical status, the funding plan
3 adoption period or funding improvement
4 period, whichever is applicable, shall end as
5 of the close of the preceding plan year.

6 “(ii) PLANS IN CRITICAL STATUS.—If
7 the plan’s actuary certifies under sub-
8 section (b)(3)(A) for a plan year in any
9 funding plan adoption period or funding
10 improvement period that the plan is in
11 critical status, the funding plan adoption
12 period or funding improvement period,
13 whichever is applicable, shall end as of the
14 close of the plan year preceding the first
15 plan year in the rehabilitation period with
16 respect to such status.

17 “(D) PLANS IN ENDANGERED STATUS AT
18 END OF PERIOD.—If the plan’s actuary certifies
19 under subsection (b)(3)(A) for the first plan
20 year following the close of the period described
21 in subparagraph (A) that the plan is in endan-
22 gered status, the provisions of this subsection
23 and subsection (d) shall be applied as if such
24 first plan year were an initial determination
25 year, except that the plan may not be amended

1 in a manner inconsistent with the funding im-
2 provement plan in effect for the preceding plan
3 year until a new funding improvement plan is
4 adopted.

5 “(5) SPECIAL RULES FOR SERIOUSLY ENDAN-
6 GERED PLANS MORE THAN 70 PERCENT FUNDED.—

7 “(A) IN GENERAL.—If the funded percent-
8 age of a plan in seriously endangered status
9 was more than 70 percent as of the beginning
10 of the initial determination year—

11 “(i) paragraphs (3)(B) and (4)(B)
12 shall apply only if the plan’s actuary cer-
13 tifies, within 30 days after the certification
14 under subsection (b)(3)(A) for the initial
15 determination year, that, based on the
16 terms of the plan and the collective bar-
17 gaining agreements in effect at the time of
18 such certification, the plan is not projected
19 to meet the requirements of paragraph
20 (3)(A) (without regard to paragraphs
21 (3)(B) and (4)(B)), and

22 “(ii) if there is a certification under
23 clause (i), the plan may, in formulating its
24 funding improvement plan, only take into
25 account the rules of paragraph (3)(B) and

1 (4)(B) for plan years in the funding im-
2 provement period beginning on or before
3 the date on which the last of the collective
4 bargaining agreements described in para-
5 graph (4)(A)(ii) expires.

6 “(B) SPECIAL RULE AFTER EXPIRATION
7 OF AGREEMENTS.—Notwithstanding subpara-
8 graph (A)(ii), if, for any plan year ending after
9 the date described in subparagraph (A)(ii), the
10 plan actuary certifies (at the time of the annual
11 certification under subsection (b)(3)(A) for such
12 plan year) that, based on the terms of the plan
13 and collective bargaining agreements in effect
14 at the time of that annual certification, the plan
15 is not projected to be able to meet the require-
16 ments of paragraph (3)(A) (without regard to
17 paragraphs (3)(B) and (4)(B)), paragraphs
18 (3)(B) and (4)(B) shall continue to apply for
19 such year.

20 “(6) UPDATES TO FUNDING IMPROVEMENT
21 PLAN AND SCHEDULES.—

22 “(A) FUNDING IMPROVEMENT PLAN.—The
23 plan sponsor shall annually update the funding
24 improvement plan and shall file the update with
25 the plan’s annual report under section 104.

1 “(B) SCHEDULES.—The plan sponsor shall
2 annually update any schedule of contribution
3 rates provided under this subsection to reflect
4 the experience of the plan.

5 “(C) DURATION OF SCHEDULE.—A sched-
6 ule of contribution rates provided by the plan
7 sponsor and relied upon by bargaining parties
8 in negotiating a collective bargaining agreement
9 shall remain in effect for the duration of that
10 collective bargaining agreement.

11 “(7) IMPOSITION OF DEFAULT SCHEDULE
12 WHERE FAILURE TO ADOPT FUNDING IMPROVEMENT
13 PLAN.—

14 “(A) IN GENERAL.—If—

15 “(i) a collective bargaining agreement
16 providing for contributions under a multi-
17 employer plan that was in effect at the
18 time the plan entered endangered status
19 expires, and

20 “(ii) after receiving one or more
21 schedules from the plan sponsor under
22 paragraph (1)(B), the bargaining parties
23 with respect to such agreement fail to
24 agree on changes to contribution or benefit
25 schedules necessary to meet the applicable

1 benchmarks in accordance with the fund-
2 ing improvement plan,
3 the plan sponsor shall implement the schedule
4 described in paragraph (1)(B)(i)(I) beginning
5 on the date specified in subparagraph (B).

6 “(B) DATE OF IMPLEMENTATION.—The
7 date specified in this subparagraph is the ear-
8 lier of the date—

9 “(i) on which the Secretary certifies
10 that the parties are at an impasse, or

11 “(ii) which is 180 days after the date
12 on which the collective bargaining agree-
13 ment described in subparagraph (A) ex-
14 pires.

15 “(8) FUNDING PLAN ADOPTION PERIOD.—For
16 purposes of this section, the term ‘funding plan
17 adoption period’ means the period beginning on the
18 date of the certification under subsection (b)(3)(A)
19 for the initial determination year and ending on the
20 day before the first day of the funding improvement
21 period.

22 “(d) RULES FOR OPERATION OF PLAN DURING
23 ADOPTION AND IMPROVEMENT PERIODS.—

24 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-
25 RIOD.—During the funding plan adoption period—

1 “(A) the plan sponsor may not accept a
2 collective bargaining agreement or participation
3 agreement with respect to the multiemployer
4 plan that provides for—

5 “(i) a reduction in the level of con-
6 tributions for any participants,

7 “(ii) a suspension of contributions
8 with respect to any period of service, or

9 “(iii) any new direct or indirect exclu-
10 sion of younger or newly hired employees
11 from plan participation,

12 “(B) no amendment of the plan which in-
13 creases the liabilities of the plan by reason of
14 any increase in benefits, any change in the ac-
15 crual of benefits, or any change in the rate at
16 which benefits become nonforfeitable under the
17 plan may be adopted unless the amendment is
18 required as a condition of qualification under
19 part I of subchapter D of chapter 1 of the In-
20 ternal Revenue Code of 1986 or to comply with
21 other applicable law, and

22 “(C) in the case of a plan in seriously en-
23 dangered status, the plan sponsor shall take all
24 reasonable actions which are consistent with the
25 terms of the plan and applicable law and which

1 are expected, based on reasonable assumptions,
2 to achieve—

3 “(i) an increase in the plan’s funded
4 percentage, and

5 “(ii) postponement of an accumulated
6 funding deficiency for at least 1 additional
7 plan year.

8 Actions under subparagraph (C) include applications
9 for extensions of amortization periods under section
10 304(d), use of the shortfall funding method in mak-
11 ing funding standard account computations, amend-
12 ments to the plan’s benefit structure, reductions in
13 future benefit accruals, and other reasonable actions
14 consistent with the terms of the plan and applicable
15 law.

16 “(2) COMPLIANCE WITH FUNDING IMPROVE-
17 MENT PLAN.—

18 “(A) IN GENERAL.—A plan may not be
19 amended after the date of the adoption of a
20 funding improvement plan so as to be incon-
21 sistent with the funding improvement plan.

22 “(B) NO REDUCTION IN CONTRIBU-
23 TIONS.—A plan sponsor may not during any
24 funding improvement period accept a collective
25 bargaining agreement or participation agree-

1 ment with respect to the multiemployer plan
2 that provides for—

3 “(i) a reduction in the level of con-
4 tributions for any participants,

5 “(ii) a suspension of contributions
6 with respect to any period of service, or

7 “(iii) any new direct or indirect exclu-
8 sion of younger or newly hired employees
9 from plan participation.

10 “(C) SPECIAL RULES FOR BENEFIT IN-
11 CREASES.—A plan may not be amended after
12 the date of the adoption of a funding improve-
13 ment plan so as to increase benefits, including
14 future benefit accruals, unless the plan actuary
15 certifies that the benefit increase is consistent
16 with the funding improvement plan and is paid
17 for out of contributions not required by the
18 funding improvement plan to meet the applica-
19 ble benchmark in accordance with the schedule
20 contemplated in the funding improvement plan.

21 “(e) REHABILITATION PLAN MUST BE ADOPTED
22 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

23 “(1) IN GENERAL.—In any case in which a
24 multiemployer plan is in critical status for a plan

1 year, the plan sponsor, in accordance with this sub-
2 section—

3 “(A) shall adopt a rehabilitation plan not
4 later than 240 days following the required date
5 for the actuarial certification of critical status
6 under subsection (b)(3)(A), and

7 “(B) within 30 days after the adoption of
8 the rehabilitation plan—

9 “(i) shall provide to the bargaining
10 parties 1 or more schedules showing re-
11 vised benefit structures, revised contribu-
12 tion structures, or both, which, if adopted,
13 may reasonably be expected to enable the
14 multiemployer plan to emerge from critical
15 status in accordance with the rehabilitation
16 plan, and

17 “(ii) may, if the plan sponsor deems
18 appropriate, prepare and provide the bar-
19 gaining parties with additional information
20 relating to contribution rates or benefit re-
21 ductions, alternative schedules, or other in-
22 formation relevant to emerging from crit-
23 ical status in accordance with the rehabili-
24 tation plan.

1 The schedule or schedules described in subparagraph
2 (B)(i) shall reflect reductions in future benefit ac-
3 cruals and adjustable benefits, and increases in con-
4 tributions, that the plan sponsor determines are rea-
5 sonably necessary to emerge from critical status.
6 One schedule shall be designated as the default
7 schedule and such schedule shall assume that there
8 are no increases in contributions under the plan
9 other than the increases necessary to emerge from
10 critical status after future benefit accruals and other
11 benefits (other than benefits the reduction or elimi-
12 nation of which are not permitted under section
13 204(g)) have been reduced to the maximum extent
14 permitted by law.

15 “(2) EXCEPTION FOR YEARS AFTER PROCESS
16 BEGINS.—Paragraph (1) shall not apply to a plan
17 year if such year is in a rehabilitation plan adoption
18 period or rehabilitation period by reason of the plan
19 being in critical status for a preceding plan year.
20 For purposes of this section, such preceding plan
21 year shall be the initial critical year with respect to
22 the rehabilitation plan to which it relates.

23 “(3) REHABILITATION PLAN.—For purposes of
24 this section—

1 “(A) IN GENERAL.—A rehabilitation plan
2 is a plan which consists of—

3 “(i) actions, including options or a
4 range of options to be proposed to the bar-
5 gaining parties, formulated, based on rea-
6 sonably anticipated experience and reason-
7 able actuarial assumptions, to enable the
8 plan to cease to be in critical status by the
9 end of the rehabilitation period and may
10 include reductions in plan expenditures (in-
11 cluding plan mergers and consolidations),
12 reductions in future benefit accruals or in-
13 creases in contributions, if agreed to by the
14 bargaining parties, or any combination of
15 such actions, or

16 “(ii) if the plan sponsor determines
17 that, based on reasonable actuarial as-
18 sumptions and upon exhaustion of all rea-
19 sonable measures, the plan can not reason-
20 ably be expected to emerge from critical
21 status by the end of the rehabilitation pe-
22 riod, reasonable measures to emerge from
23 critical status at a later time or to forestall
24 possible insolvency (within the meaning of
25 section 4245).

1 A rehabilitation plan must provide annual
2 standards for meeting the requirements of such
3 rehabilitation plan. Such plan shall also include
4 the schedules required to be provided under
5 paragraph (1)(B)(i) and if clause (ii) applies,
6 shall set forth the alternatives considered, ex-
7 plain why the plan is not reasonably expected to
8 emerge from critical status by the end of the re-
9 habilitation period, and specify when, if ever,
10 the plan is expected to emerge from critical sta-
11 tus in accordance with the rehabilitation plan.

12 “(B) UPDATES TO REHABILITATION PLAN
13 AND SCHEDULES.—

14 “(i) REHABILITATION PLAN.—The
15 plan sponsor shall annually update the re-
16 habilitation plan and shall file the update
17 with the plan’s annual report under section
18 104.

19 “(ii) SCHEDULES.—The plan sponsor
20 shall annually update any schedule of con-
21 tribution rates provided under this sub-
22 section to reflect the experience of the
23 plan.

24 “(iii) DURATION OF SCHEDULE.—A
25 schedule of contribution rates provided by

1 the plan sponsor and relied upon by bar-
2 gaining parties in negotiating a collective
3 bargaining agreement shall remain in ef-
4 fect for the duration of that collective bar-
5 gaining agreement.

6 “(C) IMPOSITION OF DEFAULT SCHEDULE
7 WHERE FAILURE TO ADOPT REHABILITATION
8 PLAN.—

9 “(i) IN GENERAL.—If—

10 “(I) a collective bargaining agree-
11 ment providing for contributions
12 under a multiemployer plan that was
13 in effect at the time the plan entered
14 critical status expires, and

15 “(II) after receiving one or more
16 schedules from the plan sponsor under
17 paragraph (1)(B), the bargaining par-
18 ties with respect to such agreement
19 fail to adopt a contribution or benefit
20 schedules with terms consistent with
21 the rehabilitation plan and the sched-
22 ule from the plan sponsor under para-
23 graph (1)(B)(i),

24 the plan sponsor shall implement the de-
25 fault schedule described in the last sen-

1 tence of paragraph (1) beginning on the
2 date specified in clause (ii).

3 “(ii) DATE OF IMPLEMENTATION.—

4 The date specified in this clause is the ear-
5 lier of the date—

6 “(I) on which the Secretary cer-
7 tifies that the parties are at an im-
8 passe, or

9 “(II) which is 180 days after the
10 date on which the collective bar-
11 gaining agreement described in clause
12 (i) expires.

13 “(4) REHABILITATION PERIOD.—For purposes
14 of this section—

15 “(A) IN GENERAL.—The rehabilitation pe-
16 riod for a plan in critical status is the 10-year
17 period beginning on the first day of the first
18 plan year of the multiemployer plan following
19 the earlier of—

20 “(i) the second anniversary of the
21 date of the adoption of the rehabilitation
22 plan, or

23 “(ii) the expiration of the collective
24 bargaining agreements in effect on the
25 date of the due date for the actuarial cer-

1 tification of critical status for the initial
2 critical year under subsection (a)(1) and
3 covering, as of such date at least 75 per-
4 cent of the active participants in such mul-
5 tiemployer plan.

6 If a plan emerges from critical status as pro-
7 vided under subparagraph (B) before the end of
8 such 10-year period, the rehabilitation period
9 shall end with the plan year preceding the plan
10 year for which the determination under sub-
11 paragraph (B) is made.

12 “(B) EMERGENCE.—A plan in critical sta-
13 tus shall remain in such status until a plan
14 year for which the plan actuary certifies, in ac-
15 cordance with subsection (b)(3)(A), that the
16 plan is not projected to have an accumulated
17 funding deficiency for the plan year or any of
18 the 9 succeeding plan years, without regard to
19 the use of the shortfall method and taking into
20 account any extension of amortization periods
21 under section 304(d).

22 “(5) REHABILITATION PLAN ADOPTION PE-
23 RIOD.—For purposes of this section, the term ‘reha-
24 bilitation plan adoption period’ means the period be-
25 ginning on the date of the certification under sub-

1 section (b)(3)(A) for the initial critical year and end-
2 ing on the day before the first day of the rehabilita-
3 tion period.

4 “(6) LIMITATION ON REDUCTION IN RATES OF
5 FUTURE ACCRUALS.—Any reduction in the rate of
6 future accruals under the default schedule described
7 in paragraph (1)(B)(i) shall not reduce the rate of
8 future accruals below—

9 “(A) a monthly benefit (payable as a single
10 life annuity commencing at the participant’s
11 normal retirement age) equal to 1 percent of
12 the contributions required to be made with re-
13 spect to a participant, or the equivalent stand-
14 ard accrual rate for a participant or group of
15 participants under the collective bargaining
16 agreements in effect as of the first day of the
17 initial critical year, or

18 “(B) if lower, the accrual rate under the
19 plan on such first day.

20 The equivalent standard accrual rate shall be deter-
21 mined by the plan sponsor based on the standard or
22 average contribution base units which the plan spon-
23 sor determines to be representative for active partici-
24 pants and such other factors as the plan sponsor de-
25 termines to be relevant. Nothing in this paragraph

1 shall be construed as limiting the ability of the plan
2 sponsor to prepare and provide the bargaining par-
3 ties with alternative schedules to the default sched-
4 ule that established lower or higher accrual and con-
5 tribution rates than the rates otherwise described in
6 this paragraph.

7 “(7) AUTOMATIC EMPLOYER SURCHARGE.—

8 “(A) IMPOSITION OF SURCHARGE.—Each
9 employer otherwise obligated to make contribu-
10 tions for the initial critical year shall be obli-
11 gated to pay to the plan for such year a sur-
12 charge equal to 5 percent of the contributions
13 otherwise required under the applicable collec-
14 tive bargaining agreement (or other agreement
15 pursuant to which the employer contributes).
16 For each succeeding plan year in which the
17 plan is in critical status for a consecutive period
18 of years beginning with the initial critical year,
19 the surcharge shall be 10 percent of the con-
20 tributions otherwise so required.

21 “(B) ENFORCEMENT OF SURCHARGE.—

22 The surcharges under subparagraph (A) shall
23 be due and payable on the same schedule as the
24 contributions on which the surcharges are
25 based. Any failure to make a surcharge pay-

1 ment shall be treated as a delinquent contribu-
2 tion under section 515 and shall be enforceable
3 as such.

4 “(C) SURCHARGE TO TERMINATE UPON
5 COLLECTIVE BARGAINING AGREEMENT RENEGO-
6 TIATION.—The surcharge under this paragraph
7 shall cease to be effective with respect to em-
8 ployees covered by a collective bargaining agree-
9 ment (or other agreement pursuant to which
10 the employer contributes), beginning on the ef-
11 fective date of a collective bargaining agreement
12 (or other such agreement) that includes terms
13 consistent with a schedule presented by the
14 plan sponsor under paragraph (1)(B)(i), as
15 modified under subparagraph (B) of paragraph
16 (3).

17 “(D) SURCHARGE NOT TO APPLY UNTIL
18 EMPLOYER RECEIVES NOTICE.—The surcharge
19 under this paragraph shall not apply to an em-
20 ployer until 30 days after the employer has
21 been notified by the plan sponsor that the plan
22 is in critical status and that the surcharge is in
23 effect.

24 “(E) SURCHARGE NOT TO GENERATE IN-
25 CREASED BENEFIT ACCRUALS.—Notwith-

1 standing any provision of a plan to the con-
2 trary, the amount of any surcharge under this
3 paragraph shall not be the basis for any benefit
4 accrual under the plan.

5 “(8) BENEFIT ADJUSTMENTS.—

6 “(A) ADJUSTABLE BENEFITS.—

7 “(i) IN GENERAL.—Notwithstanding
8 section 204(g), the plan sponsor shall, sub-
9 ject to the notice requirements in subpara-
10 graph (C), make any reductions to adjust-
11 able benefits which the plan sponsor deems
12 appropriate, based upon the outcome of
13 collective bargaining over the schedule or
14 schedules provided under paragraph
15 (1)(B)(i).

16 “(ii) EXCEPTION FOR RETIREES.—

17 Except in the case of adjustable benefits
18 described in clause (iv)(III), the plan spon-
19 sor of a plan in critical status shall not re-
20 duce adjustable benefits of any participant
21 or beneficiary whose benefit commence-
22 ment date is before the date on which the
23 plan provides notice to the participant or
24 beneficiary under subsection (b)(3)(D) for
25 the initial critical year.

1 “(iii) PLAN SPONSOR FLEXIBILITY.—

2 The plan sponsor shall include in the
3 schedules provided to the bargaining par-
4 ties an allowance for funding the benefits
5 of participants with respect to whom con-
6 tributions are not currently required to be
7 made, and shall reduce their benefits to
8 the extent permitted under this title and
9 considered appropriate by the plan sponsor
10 based on the plan’s then current overall
11 funding status.

12 “(iv) ADJUSTABLE BENEFIT DE-
13 FINED.—For purposes of this paragraph,
14 the term ‘adjustable benefit’ means—

15 “(I) benefits, rights, and features
16 under the plan, including post-retire-
17 ment death benefits, 60-month guar-
18 antees, disability benefits not yet in
19 pay status, and similar benefits,

20 “(II) any early retirement benefit
21 or retirement-type subsidy (within the
22 meaning of section 204(g)(2)(A)) and
23 any benefit payment option (other
24 than the qualified joint-and survivor
25 annuity), and

1 “(III) benefit increases that
2 would not be eligible for a guarantee
3 under section 4022A on the first day
4 of initial critical year because the in-
5 creases were adopted (or, if later, took
6 effect) less than 60 months before
7 such first day.

8 “(B) NORMAL RETIREMENT BENEFITS
9 PROTECTED.—Except as provided in subpara-
10 graph (A)(iv)(III), nothing in this paragraph
11 shall be construed to permit a plan to reduce
12 the level of a participant’s accrued benefit pay-
13 able at normal retirement age.

14 “(C) NOTICE REQUIREMENTS.—

15 “(i) IN GENERAL.—No reduction may
16 be made to adjustable benefits under sub-
17 paragraph (A) unless notice of such reduc-
18 tion has been given at least 30 days before
19 the general effective date of such reduction
20 for all participants and beneficiaries to—

21 “(I) plan participants and bene-
22 ficiaries,

23 “(II) each employer who has an
24 obligation to contribute (within the

1 meaning of section 4212(a)) under the
2 plan, and

3 “(III) each employee organization
4 which, for purposes of collective bar-
5 gaining, represents plan participants
6 employed by such an employer.

7 “(ii) CONTENT OF NOTICE.—The no-
8 tice under clause (i) shall contain—

9 “(I) sufficient information to en-
10 able participants and beneficiaries to
11 understand the effect of any reduction
12 on their benefits, including an esti-
13 mate (on an annual or monthly basis)
14 of any affected adjustable benefit that
15 a participant or beneficiary would oth-
16 erwise have been eligible for as of the
17 general effective date described in
18 clause (i), and

19 “(II) information as to the rights
20 and remedies of plan participants and
21 beneficiaries as well as how to contact
22 the Department of Labor for further
23 information and assistance where ap-
24 propriate.

1 “(iii) FORM AND MANNER.—Any no-
2 tice under clause (i)—

3 “(I) shall be provided in a form
4 and manner prescribed in regulations
5 of the Secretary,

6 “(II) shall be written in a man-
7 ner so as to be understood by the av-
8 erage plan participant, and

9 “(III) may be provided in writ-
10 ten, electronic, or other appropriate
11 form to the extent such form is rea-
12 sonably accessible to persons to whom
13 the notice is required to be provided.

14 The Secretary shall in the regulations pre-
15 scribed under subclause (I) establish a
16 model notice that a plan sponsor may use
17 to meet the requirements of this subpara-
18 graph.

19 “(9) ADJUSTMENTS DISREGARDED IN WITH-
20 DRAWAL LIABILITY DETERMINATION.—

21 “(A) BENEFIT REDUCTIONS.—Any benefit
22 reductions under this subsection shall be dis-
23 regarded in determining a plan’s unfunded vest-
24 ed benefits for purposes of determining an em-
25 ployer’s withdrawal liability under section 4201.

1 “(B) SURCHARGES.—Any surcharges
2 under paragraph (7) shall be disregarded in de-
3 termining an employer’s withdrawal liability
4 under section 4211, except for purposes of de-
5 termining the unfunded vested benefits attrib-
6 utable to an employer under section 4211(c)(4)
7 or a comparable method approved under section
8 4211(c)(5).

9 “(C) SIMPLIFIED CALCULATIONS.—The
10 Pension Benefit Guaranty Corporation shall
11 prescribe simplified methods for the application
12 of this paragraph in determining withdrawal li-
13 ability.

14 “(f) RULES FOR OPERATION OF PLAN DURING
15 ADOPTION AND REHABILITATION PERIOD.—

16 “(1) COMPLIANCE WITH REHABILITATION
17 PLAN.—

18 “(A) IN GENERAL.—A plan may not be
19 amended after the date of the adoption of a re-
20 habilitation plan under subsection (e) so as to
21 be inconsistent with the rehabilitation plan.

22 “(B) SPECIAL RULES FOR BENEFIT IN-
23 CREASES.—A plan may not be amended after
24 the date of the adoption of a rehabilitation plan
25 under subsection (e) so as to increase benefits,

1 including future benefit accruals, unless the
2 plan actuary certifies that such increase is paid
3 for out of additional contributions not con-
4 templated by the rehabilitation plan, and, after
5 taking into account the benefit increase, the
6 multiemployer plan still is reasonably expected
7 to emerge from critical status by the end of the
8 rehabilitation period on the schedule con-
9 templated in the rehabilitation plan.

10 “(2) RESTRICTION ON LUMP SUMS AND SIMI-
11 LAR BENEFITS.—

12 “(A) IN GENERAL.—Effective on the date
13 the notice of certification of the plan’s critical
14 status for the initial critical year under sub-
15 section (b)(3)(D) is sent, and notwithstanding
16 section 204(g), the plan shall not pay—

17 “(i) any payment, in excess of the
18 monthly amount paid under a single life
19 annuity (plus any social security supple-
20 ments described in the last sentence of sec-
21 tion 204(b)(1)(G)),

22 “(ii) any payment for the purchase of
23 an irrevocable commitment from an insurer
24 to pay benefits, and

1 “(iii) any other payment specified by
2 the Secretary of the Treasury by regula-
3 tions.

4 “(B) EXCEPTION.—Subparagraph (A)
5 shall not apply to a benefit which under section
6 203(e) may be immediately distributed without
7 the consent of the participant or to any makeup
8 payment in the case of a retroactive annuity
9 starting date or any similar payment of benefits
10 owed with respect to a prior period.

11 “(3) ADJUSTMENTS DISREGARDED IN WITH-
12 DRAWAL LIABILITY DETERMINATION.—Any benefit
13 reductions under this subsection shall be disregarded
14 in determining a plan’s unfunded vested benefits for
15 purposes of determining an employer’s withdrawal li-
16 ability under section 4201.

17 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-
18 RIOD.—During the rehabilitation plan adoption pe-
19 riod—

20 “(A) the plan sponsor may not accept a
21 collective bargaining agreement or participation
22 agreement with respect to the multiemployer
23 plan that provides for—

24 “(i) a reduction in the level of con-
25 tributions for any participants,

1 “(ii) a suspension of contributions
2 with respect to any period of service, or

3 “(iii) any new direct or indirect exclu-
4 sion of younger or newly hired employees
5 from plan participation, and

6 “(B) no amendment of the plan which in-
7 creases the liabilities of the plan by reason of
8 any increase in benefits, any change in the ac-
9 crual of benefits, or any change in the rate at
10 which benefits become nonforfeitable under the
11 plan may be adopted unless the amendment is
12 required as a condition of qualification under
13 part I of subchapter D of chapter 1 of the In-
14 ternal Revenue Code of 1986 or to comply with
15 other applicable law.

16 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR
17 DECISIONS.—If, within 60 days of the due date for adop-
18 tion of a funding improvement plan or a rehabilitation
19 plan under subsection (e), the plan sponsor of a plan in
20 endangered status or a plan in critical status has not
21 agreed on a funding improvement plan or rehabilitation
22 plan, then any member of the board or group that con-
23 stitutes the plan sponsor may require that the plan spon-
24 sor enter into an expedited dispute resolution procedure

1 for the development and adoption of a funding improve-
2 ment plan or rehabilitation plan.

3 “(h) NONBARGAINED PARTICIPATION.—

4 “(1) BOTH BARGAINED AND NONBARGAINED
5 EMPLOYEE-PARTICIPANTS.—In the case of an em-
6 ployer that contributes to a multiemployer plan with
7 respect to both employees who are covered by one or
8 more collective bargaining agreements and employ-
9 ees who are not so covered, if the plan is in endan-
10 gered status or in critical status, benefits of and
11 contributions for the nonbargained employees, in-
12 cluding surcharges on those contributions, shall be
13 determined as if those nonbargained employees were
14 covered under the first to expire of the employer’s
15 collective bargaining agreements in effect when the
16 plan entered endangered or critical status.

17 “(2) NONBARGAINED EMPLOYEES ONLY.—In
18 the case of an employer that contributes to a multi-
19 employer plan only with respect to employees who
20 are not covered by a collective bargaining agreement,
21 this section shall be applied as if the employer were
22 the bargaining party, and its participation agree-
23 ment with the plan were a collective bargaining
24 agreement with a term ending on the first day of the
25 plan year beginning after the employer is provided

1 the schedule or schedules described in subsections
2 (c) and (e).

3 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-
4 poses of this section—

5 “(1) BARGAINING PARTY.—The term ‘bar-
6 gaining party’ means—

7 “(A)(i) except as provided in clause (ii), an
8 employer who has an obligation to contribute
9 under the plan; or

10 “(ii) in the case of a plan described under
11 section 404(e) of the Internal Revenue Code of
12 1986, or a continuation of such a plan, the as-
13 sociation of employers that is the employer set-
14 tlor of the plan; and

15 “(B) an employee organization which, for
16 purposes of collective bargaining, represents
17 plan participants employed by an employer who
18 has an obligation to contribute under the plan.

19 “(2) FUNDED PERCENTAGE.—The term ‘fund-
20 ed percentage’ means the percentage equal to a frac-
21 tion—

22 “(A) the numerator of which is the value
23 of the plan’s assets, as determined under sec-
24 tion 304(c)(2), and

1 “(B) the denominator of which is the ac-
2 crued liability of the plan, determined using ac-
3 tuarial assumptions described in section
4 304(c)(3).

5 “(3) ACCUMULATED FUNDING DEFICIENCY.—
6 The term ‘accumulated funding deficiency’ has the
7 meaning given such term in section 304(a).

8 “(4) ACTIVE PARTICIPANT.—The term ‘active
9 participant’ means, in connection with a multiem-
10 ployer plan, a participant who is in covered service
11 under the plan.

12 “(5) INACTIVE PARTICIPANT.—The term ‘inac-
13 tive participant’ means, in connection with a multi-
14 employer plan, a participant, or the beneficiary or
15 alternate payee of a participant, who—

16 “(A) is not in covered service under the
17 plan, and

18 “(B) is in pay status under the plan or has
19 a nonforfeitable right to benefits under the
20 plan.

21 “(6) PAY STATUS.—A person is in pay status
22 under a multiemployer plan if—

23 “(A) at any time during the current plan
24 year, such person is a participant or beneficiary
25 under the plan and is paid an early, late, nor-

1 mal, or disability retirement benefit under the
2 plan (or a death benefit under the plan related
3 to a retirement benefit), or

4 “(B) to the extent provided in regulations
5 of the Secretary of the Treasury, such person
6 is entitled to such a benefit under the plan.

7 “(7) OBLIGATION TO CONTRIBUTE.—The term
8 ‘obligation to contribute’ has the meaning given such
9 term under section 4212(a).

10 “(8) ACTUARIAL METHOD.—Notwithstanding
11 any other provision of this section, the actuary’s de-
12 terminations with respect to a plan’s normal cost,
13 actuarial accrued liability, and improvements in a
14 plan’s funded percentage under this section shall be
15 based upon the unit credit funding method (whether
16 or not that method is used for the plan’s actuarial
17 valuation).

18 “(9) PLAN SPONSOR.—In the case of a plan de-
19 scribed under section 404(c) of the Internal Revenue
20 Code of 1986, or a continuation of such a plan, the
21 term ‘plan sponsor’ means the bargaining parties de-
22 scribed under paragraph (1).

23 “(10) BENEFIT COMMENCEMENT DATE.—The
24 term ‘benefit commencement date’ means the annu-
25 ity starting date (or in the case of a retroactive an-

1 nuity starting date, the date on which benefit pay-
2 ments begin).”.

3 (b) ENFORCEMENT.—Section 502 of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C. 1132)
5 is amended—

6 (1) in subsection (a)(6) by striking “(6), or
7 (7)” and inserting “(6), (7), or (8)”;

8 (2) by redesignating subsection (c)(8) as sub-
9 section (c)(9); and

10 (3) by inserting after subsection (c)(7) the fol-
11 lowing new paragraph:

12 “(8) The Secretary may assess against any plan
13 sponsor of a multiemployer plan a civil penalty of
14 not more than \$1,100 per day—

15 “(A) for each violation by such sponsor of
16 the requirement under section 305 to adopt by
17 the deadline established in that section a fund-
18 ing improvement plan or rehabilitation plan
19 with respect to a multiemployer which is in en-
20 dangered or critical status, or

21 “(B) in the case of a plan in endangered
22 status which is not in seriously endangered sta-
23 tus, for failure by the plan to meet the applica-
24 ble benchmarks under section 305 by the end of

1 the funding improvement period with respect to
2 the plan.”.

3 (c) CAUSE OF ACTION TO COMPEL ADOPTION OR IM-
4 PLEMENTATION OF FUNDING IMPROVEMENT OR REHA-
5 BILITATION PLAN.—Section 502(a) of the Employee Re-
6 tirement Income Security Act of 1974 is amended by
7 striking “or” at the end of paragraph (8), by striking the
8 period at the end of paragraph (9) and inserting “; or”
9 and by adding at the end the following:

10 “(10) in the case of a multiemployer plan that
11 has been certified by the actuary to be in endan-
12 gered or critical status under section 305, if the plan
13 sponsor—

14 “(A) has not adopted a funding improve-
15 ment or rehabilitation plan under that section
16 by the deadline established in such section, or

17 “(B) fails to update or comply with the
18 terms of the funding improvement or rehabilita-
19 tion plan in accordance with the requirements
20 of such section,

21 by an employer that has an obligation to contribute
22 with respect to the multiemployer plan or an em-
23 ployee organization that represents active partici-
24 pants in the multiemployer plan, for an order com-
25 pelling the plan sponsor to adopt a funding improve-

1 ment or rehabilitation plan or to update or comply
2 with the terms of the funding improvement or reha-
3 bilitation plan in accordance with the requirements
4 of such section and the funding improvement or re-
5 habilitation plan.”.

6 (d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—
7 Section 302(b) of the Employee Retirement Income Secu-
8 rity Act of 1974, as amended by this Act, is amended by
9 adding at the end the following new paragraph:

10 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-
11 TUS.—Paragraph (1) shall not apply in the case of
12 a multiemployer plan for any plan year in which the
13 plan is in critical status pursuant to section 305.
14 This paragraph shall only apply if the plan adopts
15 a rehabilitation plan in accordance with section
16 305(e) and complies with the terms of such rehabili-
17 tation plan (and any updates or modifications of the
18 plan).”.

19 (e) CONFORMING AMENDMENT.—The table of con-
20 tents in section 1 of such Act (as amended by the pre-
21 ceding provisions of this Act) is amended by inserting
22 after the item relating to section 304 the following new
23 item:

 “Sec. 305. Additional funding rules for multiemployer plans in endangered sta-
 tus or critical status.”.

24 (f) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply with respect to plan years be-
3 ginning after 2007.

4 (2) SPECIAL RULE FOR CERTAIN NOTICES.—In
5 any case in which a plan’s actuary certifies that it
6 is reasonably expected that a multiemployer plan will
7 be in critical status under section 305(b)(3) of the
8 Employee Retirement Income Security Act of 1974,
9 as added by this section, with respect to the first
10 plan year beginning after 2007, the notice required
11 under subparagraph (D) of such section may be pro-
12 vided at any time after the date of enactment, so
13 long as it is provided on or before the last date for
14 providing the notice under such subparagraph.

15 (3) SPECIAL RULE FOR CERTAIN RESTORED
16 BENEFITS.—In the case of a multiemployer plan—

17 (A) with respect to which benefits were re-
18 duced pursuant to a plan amendment adopted
19 on or after January 1, 2002, and before June
20 30, 2005, and

21 (B) which, pursuant to the plan document,
22 the trust agreement, or a formal written com-
23 munication from the plan sponsor to partici-
24 pants provided before June 30, 2005, provided
25 for the restoration of such benefits,

1 the amendments made by this section shall not apply
2 to such benefit restorations to the extent that any
3 restriction on the providing or accrual of such bene-
4 fits would otherwise apply by reason of such amend-
5 ments.

6 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
7 **TIEMPLOYER PLANS.**

8 (a) **ADVANCE DETERMINATION OF IMPENDING IN-**
9 **SOLVENCY OVER 5 YEARS.**—Section 4245(d)(1) of the
10 Employee Retirement Income Security Act of 1974 (29
11 U.S.C. 1426(d)(1)) is amended—

12 (1) by striking “3 plan years” the second place
13 it appears and inserting “5 plan years”; and

14 (2) by adding at the end the following new sen-
15 tence: “If the plan sponsor makes such a determina-
16 tion that the plan will be insolvent in any of the next
17 5 plan years, the plan sponsor shall make the com-
18 parison under this paragraph at least annually until
19 the plan sponsor makes a determination that the
20 plan will not be insolvent in any of the next 5 plan
21 years.”.

22 (b) **EFFECTIVE DATE.**—The amendments made by
23 this section shall apply with respect to determinations
24 made in plan years beginning after 2007.