

1 relevant information provided by a person to
2 whom notice was given under paragraph (1).”.

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to plan years beginning after
6 2007.

7 (2) SPECIAL RULE FOR CERTAIN AMORTIZATION
8 EXTENSIONS.—If the Secretary of the Treasury
9 grants an extension under section 304 of the Em-
10 ployee Retirement Income Security Act of 1974 and
11 section 412(e) of the Internal Revenue Code of 1986
12 with respect to any application filed with the Sec-
13 retary of the Treasury on or before June 30, 2005,
14 the extension (and any modification thereof) shall be
15 applied and administered under the rules of such
16 sections as in effect before the enactment of this
17 Act, including the use of the rate of interest deter-
18 mined under section 6621(b) of such Code.

19 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**
20 **PLOYER PLANS IN ENDANGERED OR CRIT-**
21 **ICAL STATUS.**

22 (a) IN GENERAL.—Subpart A of part III of sub-
23 chapter D of chapter 1 of the Internal Revenue Code of
24 1986 (as amended by this Act) is amended by inserting
25 after section 431 the following new section:

1 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR**
2 **CRITICAL STATUS.**

4 “(a) **GENERAL RULE.**—For purposes of this part, in
5 the case of a multiemployer plan in effect on July 16,
6 2006 —

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

8 “(A) the plan sponsor shall adopt and im-
9 plement a funding improvement plan in accord-
10 ance with the requirements of subsection (c),
11 and

12 “(B) the requirements of subsection (d)
13 shall apply during the funding plan adoption
14 period and the funding improvement period,
15 and

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

17 “(A) the plan sponsor shall adopt and im-
18 plement a rehabilitation plan in accordance with
19 the requirements of subsection (e), and

20 “(B) the requirements of subsection (f)
21 shall apply during the rehabilitation plan adop-
22 tion period and the rehabilitation period.

23 “(b) **DETERMINATION OF ENDANGERED AND CRIT-**
24 **ICAL STATUS.**—For purposes of this section—

25 “(1) **ENDANGERED STATUS.**—A multiemployer
26 plan is in endangered status for a plan year if, as

1 determined by the plan actuary under paragraph
2 (3), the plan is not in critical status for the plan
3 year and, as of the beginning of the plan year, ei-
4 ther—

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

7 “(B) the plan has an accumulated funding
8 deficiency for such plan year, or is projected to
9 have such an accumulated funding deficiency
10 for any of the 6 succeeding plan years, taking
11 into account any extension of amortization peri-
12 ods under section 431(d).

13 For purposes of this section, a plan shall be treated
14 as in seriously endangered status for a plan year if
15 the plan is described in both subparagraphs (A) and
16 (B).

17 “(2) CRITICAL STATUS.—A multiemployer plan
18 is in critical status for a plan year if, as determined
19 by the plan actuary under paragraph (3), the plan
20 is described in 1 or more of the following subpara-
21 graphs as of the beginning of the plan year:

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

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

1 “(ii) the sum of—

2 “(I) the fair market value of plan
3 assets, plus

4 “(II) the present value of the
5 reasonably anticipated employer con-
6 tributions for the current plan year
7 and each of the 6 succeeding plan
8 years, assuming that the terms of all
9 collective bargaining agreements pur-
10 suant to which the plan is maintained
11 for the current plan year continue in
12 effect for succeeding plan years,

13 is less than the present value of all non-
14 forfeitable benefits projected to be payable
15 under the plan during the current plan
16 year and each of the 6 succeeding plan
17 years (plus administrative expenses for
18 such plan years).

19 “(B) A plan is described in this subpara-
20 graph if—

21 “(i) the plan has an accumulated
22 funding deficiency for the current plan
23 year, not taking into account any extension
24 of amortization periods under section
25 431(d), or

1 “(ii) the plan is projected to have an
2 accumulated funding deficiency for any of
3 the 3 succeeding plan years (4 succeeding
4 plan years if the funded percentage of the
5 plan is 65 percent or less), not taking into
6 account any extension of amortization peri-
7 ods under section 431(d).

8 “(C) A plan is described in this subpara-
9 graph if—

10 “(i)(I) the plan’s normal cost for the
11 current plan year, plus interest (deter-
12 mined at the rate used for determining
13 costs under the plan) for the current plan
14 year on the amount of unfunded benefit li-
15 abilities under the plan as of the last date
16 of the preceding plan year, exceeds

17 “(II) the present value of the reason-
18 ably anticipated employer and employee
19 contributions for the current plan year,

20 “(ii) the present value, as of the be-
21 ginning of the current plan year, of non-
22 forfeitable benefits of inactive participants
23 is greater than the present value of non-
24 forfeitable benefits of active participants,
25 and

1 “(iii) the plan has an accumulated
2 funding deficiency for the current plan
3 year, or is projected to have such a defi-
4 ciency for any of the 4 succeeding plan
5 years, not taking into account any exten-
6 sion of amortization periods under section
7 431(d).

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

10 “(i) the fair market value of plan as-
11 sets, plus

12 “(ii) the present value of the reason-
13 ably anticipated employer contributions for
14 the current plan year and each of the 4
15 succeeding plan years, assuming that the
16 terms of all collective bargaining agree-
17 ments pursuant to which the plan is main-
18 tained for the current plan year continue
19 in effect for succeeding plan years,

20 is less than the present value of all benefits pro-
21 jected to be payable under the plan during the
22 current plan year and each of the 4 succeeding
23 plan years (plus administrative expenses for
24 such plan years).

1 “(3) ANNUAL CERTIFICATION BY PLAN ACTU-
2 ARY.—

3 “(A) IN GENERAL.—Not later than the
4 90th day of each plan year of a multiemployer
5 plan, the plan actuary shall certify to the Sec-
6 retary and to the plan sponsor—

7 “(i) whether or not the plan is in en-
8 dangered status for such plan year and
9 whether or not the plan is or will be in
10 critical status for such plan year, and

11 “(ii) in the case of a plan which is in
12 a funding improvement or rehabilitation
13 period, whether or not the plan is making
14 the scheduled progress in meeting the re-
15 quirements of its funding improvement or
16 rehabilitation plan.

17 “(B) ACTUARIAL PROJECTIONS OF ASSETS
18 AND LIABILITIES.—

19 “(i) IN GENERAL.—In making the de-
20 terminations and projections under this
21 subsection, the plan actuary shall make
22 projections required for the current and
23 succeeding plan years of the current value
24 of the assets of the plan and the present
25 value of all liabilities to participants and

1 beneficiaries under the plan for the current
2 plan year as of the beginning of such year.
3 The actuary's projections shall be based on
4 reasonable actuarial estimates, assump-
5 tions, and methods that, except as pro-
6 vided in clause (iii), offer the actuary's
7 best estimate of anticipated experience
8 under the plan. The projected present
9 value of liabilities as of the beginning of
10 such year shall be determined based on the
11 most recent of either—

12 “(I) the actuarial statement re-
13 quired under section 103(d) of the
14 Employee Retirement Income Security
15 Act of 1974 with respect to the most
16 recently filed annual report, or

17 “(II) the actuarial valuation for
18 the preceding plan year.

19 “(ii) DETERMINATIONS OF FUTURE
20 CONTRIBUTIONS.—Any actuarial projection
21 of plan assets shall assume—

22 “(I) reasonably anticipated em-
23 ployer contributions for the current
24 and succeeding plan years, assuming
25 that the terms of the one or more col-

1 lective bargaining agreements pursu-
2 ant to which the plan is maintained
3 for the current plan year continue in
4 effect for succeeding plan years, or

5 “(II) that employer contributions
6 for the most recent plan year will con-
7 tinue indefinitely, but only if the plan
8 actuary determines there have been no
9 significant demographic changes that
10 would make such assumption unrea-
11 sonable.

12 “(iii) PROJECTED INDUSTRY ACTIV-
13 ITY.—Any projection of activity in the in-
14 dustry or industries covered by the plan,
15 including future covered employment and
16 contribution levels, shall be based on infor-
17 mation provided by the plan sponsor,
18 which shall act reasonably and in good
19 faith.

20 “(C) PENALTY FOR FAILURE TO SECURE
21 TIMELY ACTUARIAL CERTIFICATION.—Any fail-
22 ure of the plan’s actuary to certify the plan’s
23 status under this subsection by the date speci-
24 fied in subparagraph (A) shall be treated for
25 purposes of section 502(c)(2) of the Employee

1 Retirement Income Security Act of 1974 as a
2 failure or refusal by the plan administrator to
3 file the annual report required to be filed with
4 the Secretary under section 101(b)(4) of such
5 Act.

6 “(D) NOTICE.—

7 “(i) IN GENERAL.—In any case in
8 which it is certified under subparagraph
9 (A) that a multiemployer plan is or will be
10 in endangered or critical status for a plan
11 year, the plan sponsor shall, not later than
12 30 days after the date of the certification,
13 provide notification of the endangered or
14 critical status to the participants and bene-
15 ficiaries, the bargaining parties, the Pen-
16 sion Benefit Guaranty Corporation, and
17 the Secretary of Labor.

18 “(ii) PLANS IN CRITICAL STATUS.—If
19 it is certified under subparagraph (A) that
20 a multiemployer plan is or will be in crit-
21 ical status, the plan sponsor shall include
22 in the notice under clause (i) an expla-
23 nation of the possibility that—

1 “(I) adjustable benefits (as de-
2 fined in subsection (e)(8)) may be re-
3 duced, and

4 “(II) such reductions may apply
5 to participants and beneficiaries
6 whose benefit commencement date is
7 on or after the date such notice is
8 provided for the first plan year in
9 which the plan is in critical status.

10 “(iii) MODEL NOTICE.—The Secretary
11 of Labor shall prescribe a model notice
12 that a multiemployer plan may use to sat-
13 isfy the requirements under clause (ii).

14 “(c) FUNDING IMPROVEMENT PLAN MUST BE
15 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED
16 STATUS.—

17 “(1) IN GENERAL.—In any case in which a
18 multiemployer plan is in endangered status for a
19 plan year, the plan sponsor, in accordance with this
20 subsection—

21 “(A) shall adopt a funding improvement
22 plan not later than 240 days following the re-
23 quired date for the actuarial certification of en-
24 dangered status under subsection (b)(3)(A),
25 and

1 “(B) within 30 days after the adoption of
2 the funding improvement plan—

3 “(i) shall provide to the bargaining
4 parties 1 or more schedules showing re-
5 vised benefit structures, revised contribu-
6 tion structures, or both, which, if adopted,
7 may reasonably be expected to enable the
8 multiemployer plan to meet the applicable
9 benchmarks in accordance with the fund-
10 ing improvement plan, including—

11 “(I) one proposal for reductions
12 in the amount of future benefit accru-
13 als necessary to achieve the applicable
14 benchmarks, assuming no amend-
15 ments increasing contributions under
16 the plan (other than amendments in-
17 creasing contributions necessary to
18 achieve the applicable benchmarks
19 after amendments have reduced fu-
20 ture benefit accruals to the maximum
21 extent permitted by law), and

22 “(II) one proposal for increases
23 in contributions under the plan nec-
24 essary to achieve the applicable bench-
25 marks, assuming no amendments re-

1 ducing future benefit accruals under
2 the plan, and

3 “(ii) may, if the plan sponsor deems
4 appropriate, prepare and provide the bar-
5 gaining parties with additional information
6 relating to contribution rates or benefit re-
7 ductions, alternative schedules, or other in-
8 formation relevant to achieving the appli-
9 cable benchmarks in accordance with the
10 funding improvement plan.

11 For purposes of this section, the term ‘applica-
12 ble benchmarks’ means the requirements appli-
13 cable to the multiemployer plan under para-
14 graph (3) (as modified by paragraph (5)).

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 funding plan adoption pe-
18 riod or funding improvement period by reason of the
19 plan being in endangered status for a preceding plan
20 year. For purposes of this section, such preceding
21 plan year shall be the initial determination year with
22 respect to the funding improvement plan to which it
23 relates.

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

1 “(A) IN GENERAL.—A funding improve-
2 ment plan is a plan which consists of the ac-
3 tions, including options or a range of options to
4 be proposed to the bargaining parties, formu-
5 lated to provide, based on reasonably antici-
6 pated experience and reasonable actuarial as-
7 sumptions, for the attainment by the plan dur-
8 ing the funding improvement period of the fol-
9 lowing requirements:

10 “(i) INCREASE IN PLAN’S FUNDING
11 PERCENTAGE.—The plan’s funded percent-
12 age as of the close of the funding improve-
13 ment period equals or exceeds a percentage
14 equal to the sum of—

15 “(I) such percentage as of the
16 beginning of such period, plus

17 “(II) 33 percent of the difference
18 between 100 percent and the percent-
19 age under subclause (I).

20 “(ii) AVOIDANCE OF ACCUMULATED
21 FUNDING DEFICIENCIES.—No accumulated
22 funding deficiency for any plan year during
23 the funding improvement period (taking
24 into account any extension of amortization
25 periods under section 304(d)).

1 “(B) SERIOUSLY ENDANGERED PLANS.—

2 In the case of a plan in seriously endangered
3 status, except as provided in paragraph (5),
4 subparagraph (A)(i)(II) shall be applied by sub-
5 stituting ‘20 percent’ for ‘33 percent’.

6 “(4) FUNDING IMPROVEMENT PERIOD.—For
7 purposes of this section—

8 “(A) IN GENERAL.—The funding improve-
9 ment period for any funding improvement plan
10 adopted pursuant to this subsection is the 10-
11 year period beginning on the first day of the
12 first plan year of the multiemployer plan begin-
13 ning after the earlier of—

14 “(i) the second anniversary of the
15 date of the adoption of the funding im-
16 provement plan, or

17 “(ii) the expiration of the collective
18 bargaining agreements in effect on the due
19 date for the actuarial certification of en-
20 dangered status for the initial determina-
21 tion year under subsection (b)(3)(A) and
22 covering, as of such due date, at least 75
23 percent of the active participants in such
24 multiemployer plan.

1 “(B) SERIOUSLY ENDANGERED PLANS.—

2 In the case of a plan in seriously endangered
3 status, except as provided in paragraph (5),
4 subparagraph (A) shall be applied by sub-
5 stituting ‘15-year period’ for ‘10-year period’.

6 “(C) COORDINATION WITH CHANGES IN
7 STATUS.—

8 “(i) PLANS NO LONGER IN ENDAN-
9 GERED STATUS.—If the plan’s actuary cer-
10 tifies under subsection (b)(3)(A) for a plan
11 year in any funding plan adoption period
12 or funding improvement period that the
13 plan is no longer in endangered status and
14 is not in critical status, the funding plan
15 adoption period or funding improvement
16 period, whichever is applicable, shall end as
17 of the close of the preceding plan year.

18 “(ii) PLANS IN CRITICAL STATUS.—If
19 the plan’s actuary certifies under sub-
20 section (b)(3)(A) for a plan year in any
21 funding plan adoption period or funding
22 improvement period that the plan is in
23 critical status, the funding plan adoption
24 period or funding improvement period,
25 whichever is applicable, shall end as of the

1 close of the plan year preceding the first
2 plan year in the rehabilitation period with
3 respect to such status.

4 “(D) PLANS IN ENDANGERED STATUS AT
5 END OF PERIOD.—If the plan’s actuary certifies
6 under subsection (b)(3)(A) for the first plan
7 year following the close of the period described
8 in subparagraph (A) that the plan is in endan-
9 gered status, the provisions of this subsection
10 and subsection (d) shall be applied as if such
11 first plan year were an initial determination
12 year, except that the plan may not be amended
13 in a manner inconsistent with the funding im-
14 provement plan in effect for the preceding plan
15 year until a new funding improvement plan is
16 adopted.

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

19 “(A) IN GENERAL.—If the funded percent-
20 age of a plan in seriously endangered status
21 was more than 70 percent as of the beginning
22 of the initial determination year—

23 “(i) paragraphs (3)(B) and (4)(B)
24 shall apply only if the plan’s actuary cer-
25 tifies, within 30 days after the certification

1 under subsection (b)(3)(A) for the initial
2 determination year, that, based on the
3 terms of the plan and the collective bar-
4 gaining agreements in effect at the time of
5 such certification, the plan is not projected
6 to meet the requirements of paragraph
7 (3)(A) (without regard to paragraphs
8 (3)(B) and (4)(B)), and

9 “(ii) if there is a certification under
10 clause (i), the plan may, in formulating its
11 funding improvement plan, only take into
12 account the rules of paragraph (3)(B) and
13 (4)(B) for plan years in the funding im-
14 provement period beginning on or before
15 the date on which the last of the collective
16 bargaining agreements described in para-
17 graph (4)(A)(ii) expires.

18 “(B) SPECIAL RULE AFTER EXPIRATION
19 OF AGREEMENTS.—Notwithstanding subpara-
20 graph (A)(ii), if, for any plan year ending after
21 the date described in subparagraph (A)(ii), the
22 plan actuary certifies (at the time of the annual
23 certification under subsection (b)(3)(A) for such
24 plan year) that, based on the terms of the plan
25 and collective bargaining agreements in effect

1 at the time of that annual certification, the plan
2 is not projected to be able to meet the require-
3 ments of paragraph (3)(A) (without regard to
4 paragraphs (3)(B) and (4)(B)), paragraphs
5 (3)(B) and (4)(B) shall continue to apply for
6 such year.

7 “(6) UPDATES TO FUNDING IMPROVEMENT
8 PLANS AND SCHEDULES.—

9 “(A) FUNDING IMPROVEMENT PLAN.—The
10 plan sponsor shall annually update the funding
11 improvement plan and shall file the update with
12 the plan’s annual report under section 104 of
13 the Employee Retirement Income Security Act
14 of 1974.

15 “(B) SCHEDULES.—The plan sponsor shall
16 annually update any schedule of contribution
17 rates provided under this subsection to reflect
18 the experience of the plan.

19 “(C) DURATION OF SCHEDULE.—A sched-
20 ule of contribution rates provided by the plan
21 sponsor and relied upon by bargaining parties
22 in negotiating a collective bargaining agreement
23 shall remain in effect for the duration of that
24 collective bargaining agreement.

1 “(7) IMPOSITION OF DEFAULT SCHEDULE
2 WHERE FAILURE TO ADOPT FUNDING IMPROVEMENT
3 PLAN.—

4 “(A) IN GENERAL.—If—

5 “(i) a collective bargaining agreement
6 providing for contributions under a multi-
7 employer plan that was in effect at the
8 time the plan entered endangered status
9 expires, and

10 “(ii) after receiving one or more
11 schedules from the plan sponsor under
12 paragraph (1)(B), the bargaining parties
13 with respect to such agreement fail to
14 agree on changes to contribution or benefit
15 schedules necessary to meet the applicable
16 benchmarks in accordance with the fund-
17 ing improvement plan,

18 the plan sponsor shall implement the schedule
19 described in paragraph (1)(B)(i)(I) beginning
20 on the date specified in subparagraph (B).

21 “(B) DATE OF IMPLEMENTATION.—The
22 date specified in this subparagraph is the ear-
23 lier of the date—

1 “(i) on which the Secretary of Labor
2 certifies that the parties are at an impasse,
3 or

4 “(ii) which is 180 days after the date
5 on which the collective bargaining agree-
6 ment described in subparagraph (A) ex-
7 pires.

8 “(8) FUNDING PLAN ADOPTION PERIOD.—For
9 purposes of this section, the term ‘funding plan
10 adoption period’ means the period beginning on the
11 date of the certification under subsection (b)(3)(A)
12 for the initial determination year and ending on the
13 day before the first day of the funding improvement
14 period.

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

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

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

23 “(i) a reduction in the level of con-
24 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,

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 or to com-
14 ply with other applicable law, and

15 “(C) in the case of a plan in seriously en-
16 dangered status, the plan sponsor shall take all
17 reasonable actions which are consistent with the
18 terms of the plan and applicable law and which
19 are expected, based on reasonable assumptions,
20 to achieve—

21 “(i) an increase in the plan’s funded
22 percentage, and

23 “(ii) postponement of an accumulated
24 funding deficiency for at least 1 additional
25 plan year.

1 Actions under subparagraph (C) include applications
2 for extensions of amortization periods under section
3 431(d), use of the shortfall funding method in mak-
4 ing funding standard account computations, amend-
5 ments to the plan’s benefit structure, reductions in
6 future benefit accruals, and other reasonable actions
7 consistent with the terms of the plan and applicable
8 law.

9 “(2) COMPLIANCE WITH FUNDING IMPROVE-
10 MENT PLAN.—

11 “(A) IN GENERAL.—A plan may not be
12 amended after the date of the adoption of a
13 funding improvement plan so as to be incon-
14 sistent with the funding improvement plan.

15 “(B) NO REDUCTION IN CONTRIBU-
16 TIONS.—A plan sponsor may not during any
17 funding improvement period accept a collective
18 bargaining agreement or participation agree-
19 ment with respect to the multiemployer plan
20 that provides for—

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

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

1 “(iii) any new direct or indirect exclu-
2 sion of younger or newly hired employees
3 from plan participation.

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

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

17 “(1) IN GENERAL.—In any case in which a
18 multiemployer plan is in critical status for a plan
19 year, the plan sponsor, in accordance with this sub-
20 section—

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

1 “(B) within 30 days after the adoption of
2 the rehabilitation plan—

3 “(i) shall provide to the bargaining
4 parties 1 or more schedules showing re-
5 vised benefit structures, revised contribu-
6 tion structures, or both, which, if adopted,
7 may reasonably be expected to enable the
8 multiemployer plan to emerge from critical
9 status in accordance with the rehabilitation
10 plan, and

11 “(ii) may, if the plan sponsor deems
12 appropriate, prepare and provide the bar-
13 gaining parties with additional information
14 relating to contribution rates or benefit re-
15 ductions, alternative schedules, or other in-
16 formation relevant to emerging from crit-
17 ical status in accordance with the rehabili-
18 tation plan.

19 The schedule or schedules described in subparagraph
20 (B)(i) shall reflect reductions in future benefit ac-
21 cruals and adjustable benefits, and increases in con-
22 tributions, that the plan sponsor determines are rea-
23 sonably necessary to emerge from critical status.
24 One schedule shall be designated as the default
25 schedule and such schedule shall assume that there

1 are no increases in contributions under the plan
2 other than the increases necessary to emerge from
3 critical status after future benefit accruals and other
4 benefits (other than benefits the reduction or elimi-
5 nation of which are not permitted under section
6 411(d)(6)) have been reduced to the maximum ex-
7 tent permitted by law.

8 “(2) EXCEPTION FOR YEARS AFTER PROCESS
9 BEGINS.—Paragraph (1) shall not apply to a plan
10 year if such year is in a rehabilitation plan adoption
11 period or rehabilitation period by reason of the plan
12 being in critical status for a preceding plan year.
13 For purposes of this section, such preceding plan
14 year shall be the initial critical year with respect to
15 the rehabilitation plan to which it relates.

16 “(3) REHABILITATION PLAN.—For purposes of
17 this section—

18 “(A) IN GENERAL.—A rehabilitation plan
19 is a plan which consists of—

20 “(i) actions, including options or a
21 range of options to be proposed to the bar-
22 gaining parties, formulated, based on rea-
23 sonably anticipated experience and reason-
24 able actuarial assumptions, to enable the
25 plan to cease to be in critical status by the

1 end of the rehabilitation period and may
2 include reductions in plan expenditures (in-
3 cluding plan mergers and consolidations),
4 reductions in future benefit accruals or in-
5 creases in contributions, if agreed to by the
6 bargaining parties, or any combination of
7 such actions, or

8 “(ii) if the plan sponsor determines
9 that, based on reasonable actuarial as-
10 sumptions and upon exhaustion of all rea-
11 sonable measures, the plan can not reason-
12 ably be expected to emerge from critical
13 status by the end of the rehabilitation pe-
14 riod, reasonable measures to emerge from
15 critical status at a later time or to forestall
16 possible insolvency (within the meaning of
17 section 4245 of the Employee Retirement
18 Income Security Act of 1974).

19 A rehabilitation plan must provide annual
20 standards for meeting the requirements of such
21 rehabilitation plan. Such plan shall also include
22 the schedules required to be provided under
23 paragraph (1)(B)(i) and if clause (ii) applies,
24 shall set forth the alternatives considered, ex-
25 plain why the plan is not reasonably expected to

1 emerge from critical status by the end of the re-
2 habilitation period, and specify when, if ever,
3 the plan is expected to emerge from critical sta-
4 tus in accordance with the rehabilitation plan.

5 “(B) UPDATES TO REHABILITATION PLAN
6 AND SCHEDULES.—

7 “(i) REHABILITATION PLAN.—The
8 plan sponsor shall annually update the re-
9 habilitation plan and shall file the update
10 with the plan’s annual report under section
11 104 of the Employee Retirement Income
12 Security Act of 1974.

13 “(ii) SCHEDULES.—The plan sponsor
14 shall annually update any schedule of con-
15 tribution rates provided under this sub-
16 section to reflect the experience of the
17 plan.

18 “(iii) DURATION OF SCHEDULE.—A
19 schedule of contribution rates provided by
20 the plan sponsor and relied upon by bar-
21 gaining parties in negotiating a collective
22 bargaining agreement shall remain in ef-
23 fect for the duration of that collective bar-
24 gaining agreement.

1 “(C) IMPOSITION OF DEFAULT SCHEDULE
2 WHERE FAILURE TO ADOPT REHABILITATION
3 PLAN.—

4 “(i) IN GENERAL.—If—

5 “(I) a collective bargaining agree-
6 ment providing for contributions
7 under a multiemployer plan that was
8 in effect at the time the plan entered
9 critical status expires, and

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

19 the plan sponsor shall implement the de-
20 fault schedule described in the last sen-
21 tence of paragraph (1) beginning on the
22 date specified in clause (ii).

23 “(ii) DATE OF IMPLEMENTATION.—

24 The date specified in this clause is the ear-
25 lier of the date—

1 “(I) on which the Secretary of
2 Labor certifies that the parties are at
3 an impasse, or

4 “(II) which is 180 days after the
5 date on which the collective bar-
6 gaining agreement described in clause
7 (i) expires.

8 “(4) REHABILITATION PERIOD.—For purposes
9 of this section—

10 “(A) IN GENERAL.—The rehabilitation pe-
11 riod for a plan in critical status is the 10-year
12 period beginning on the first day of the first
13 plan year of the multiemployer plan following
14 the earlier of—

15 “(i) the second anniversary of the
16 date of the adoption of the rehabilitation
17 plan, or

18 “(ii) the expiration of the collective
19 bargaining agreements in effect on the
20 date of the due date for the actuarial cer-
21 tification of critical status for the initial
22 critical year under subsection (a)(1) and
23 covering, as of such date at least 75 per-
24 cent of the active participants in such mul-
25 tiemployer plan.

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

7 “(B) EMERGENCE.—A plan in critical sta-
8 tus shall remain in such status until a plan
9 year for which the plan actuary certifies, in ac-
10 cordance with subsection (b)(3)(A), that the
11 plan is not projected to have an accumulated
12 funding deficiency for the plan year or any of
13 the 9 succeeding plan years, without regard to
14 the use of the shortfall method and taking into
15 account any extension of amortization periods
16 under section 431(d).

17 “(5) REHABILITATION PLAN ADOPTION PE-
18 RIOD.—For purposes of this section, the term ‘reha-
19 bilitation plan adoption period’ means the period be-
20 ginning on the date of the certification under sub-
21 section (b)(3)(A) for the initial critical year and end-
22 ing on the day before the first day of the rehabilita-
23 tion period.

24 “(6) LIMITATION ON REDUCTION IN RATES OF
25 FUTURE ACCRUALS.—Any reduction in the rate of

1 future accruals under the default schedule described
2 in paragraph (1)(B)(i) shall not reduce the rate of
3 future accruals below—

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

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

15 The equivalent standard accrual rate shall be deter-
16 mined by the plan sponsor based on the standard or
17 average contribution base units which the plan spon-
18 sor determines to be representative for active partici-
19 pants and such other factors as the plan sponsor de-
20 termines to be relevant. Nothing in this paragraph
21 shall be construed as limiting the ability of the plan
22 sponsor to prepare and provide the bargaining par-
23 ties with alternative schedules to the default sched-
24 ule that established lower or higher accrual and con-

1 tribution rates than the rates otherwise described in
2 this paragraph.

3 “(7) AUTOMATIC EMPLOYER SURCHARGE.—

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

17 “(B) ENFORCEMENT OF SURCHARGE.—

18 The surcharges under subparagraph (A) shall
19 be due and payable on the same schedule as the
20 contributions on which the surcharges are
21 based. Any failure to make a surcharge pay-
22 ment shall be treated as a delinquent contribu-
23 tion under section 515 of the Employee Retire-
24 ment Income Security Act of 1974 and shall be
25 enforceable as such.

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

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

21 “(E) SURCHARGE NOT TO GENERATE IN-
22 CREASED BENEFIT ACCRUALS.—Notwith-
23 standing any provision of a plan to the con-
24 trary, the amount of any surcharge under this

1 paragraph shall not be the basis for any benefit
2 accrual under the plan.

3 “(8) BENEFIT ADJUSTMENTS.—

4 “(A) ADJUSTABLE BENEFITS.—

5 “(i) IN GENERAL.—Notwithstanding
6 section 204(g), the plan sponsor shall, sub-
7 ject to the notice requirement under sub-
8 paragraph (C), make any reductions to ad-
9 justable benefits which the plan sponsor
10 deems appropriate, based upon the out-
11 come of collective bargaining over the
12 schedule or schedules provided under para-
13 graph (1)(B)(i).

14 “(ii) EXCEPTION FOR RETIREES.—

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

24 “(iii) PLAN SPONSOR FLEXIBILITY.—

25 The plan sponsor shall include in the

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

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

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

18 “(II) any early retirement benefit
19 or retirement-type subsidy (within the
20 meaning of section 411(d)(6)(B)(i))
21 and any benefit payment option (other
22 than the qualified joint-and survivor
23 annuity), and

24 “(III) benefit increases that
25 would not be eligible for a guarantee

1 under section 4022A of the Employee
2 Retirement Income Security Act of
3 1974 on the first day of initial critical
4 year because the increases were
5 adopted (or, if later, took effect) less
6 than 60 months before such first day.

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

13 “(C) NOTICE REQUIREMENTS.—

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

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

22 “(II) each employer who has an
23 obligation to contribute (within the
24 meaning of section 4212(a)) under the
25 plan, and

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

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

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

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

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

1 “(I) shall be provided in a form
2 and manner prescribed in regulations
3 of the Secretary of Labor,

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

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

12 The Secretary of Labor shall in the regula-
13 tions prescribed under subclause (I) estab-
14 lish a model notice that a plan sponsor
15 may use to meet the requirements of this
16 subparagraph.

17 “(9) ADJUSTMENTS DISREGARDED IN WITH-
18 DRAWAL LIABILITY DETERMINATION.—

19 “(A) BENEFIT REDUCTIONS.—Any benefit
20 reductions under this subsection shall be dis-
21 regarded in determining a plan’s unfunded vest-
22 ed benefits for purposes of determining an em-
23 ployer’s withdrawal liability under section 4201
24 of the Employee Retirement Income Security
25 Act of 1974.

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 of such Act, except for pur-
5 poses of determining the unfunded vested bene-
6 fits attributable to an employer under section
7 4211(c)(4) of such Act or a comparable method
8 approved under section 4211(c)(5) of such Act.

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 411(d)(6), 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 411(b)(1)(A)),

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 by regulations.

3 “(B) EXCEPTION.—Subparagraph (A)
4 shall not apply to a benefit which under section
5 411(a)(11) may be immediately distributed
6 without the consent of the participant or to any
7 makeup payment in the case of a retroactive
8 annuity starting date or any similar payment of
9 benefits owed with respect to a prior period.

10 “(3) ADJUSTMENTS DISREGARDED IN WITH-
11 DRAWAL LIABILITY DETERMINATION.—Any benefit
12 reductions under this subsection shall be disregarded
13 in determining a plan’s unfunded vested benefits for
14 purposes of determining an employer’s withdrawal li-
15 ability under section 4201 of the Employee Retirement
16 Income Security Act of 1974.

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 or to com-
14 ply with other applicable law.

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

1 “(h) NONBARGAINED PARTICIPATION.—

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

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

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

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

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

8 “(ii) in the case of a plan described under
9 section 404(c), or a continuation of such a plan,
10 the association of employers that is the em-
11 ployer settlor of the plan; and

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

16 “(2) FUNDED PERCENTAGE.—The term ‘fund-
17 ed percentage’ means the percentage equal to a frac-
18 tion—

19 “(A) the numerator of which is the value
20 of the plan’s assets, as determined under sec-
21 tion 431(c)(2), and

22 “(B) the denominator of which is the ac-
23 crued liability of the plan, determined using ac-
24 tuarial assumptions described in section
25 431(c)(3).

1 “(3) ACCUMULATED FUNDING DEFICIENCY.—
2 The term ‘accumulated funding deficiency’ has the
3 meaning given such term in section 412(a).

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

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

12 “(A) is not in covered service under the
13 plan, and

14 “(B) is in pay status under the plan or has
15 a nonforfeitable right to benefits under the
16 plan.

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

19 “(A) at any time during the current plan
20 year, such person is a participant or beneficiary
21 under the plan and is paid an early, late, nor-
22 mal, or disability retirement benefit under the
23 plan (or a death benefit under the plan related
24 to a retirement benefit), or

1 “(B) to the extent provided in regulations
2 of the Secretary, such person is entitled to such
3 a benefit under the plan.

4 “(7) OBLIGATION TO CONTRIBUTE.—The term
5 ‘obligation to contribute’ has the meaning given such
6 term under section 4212(a) of the Employee Retirement
7 Income Security Act of 1974.

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

16 “(9) PLAN SPONSOR.—In the case of a plan de-
17 scribed under section 404(c), or a continuation of
18 such a plan, the term ‘plan sponsor’ means the bar-
19 gaining parties described under paragraph (1).

20 “(10) BENEFIT COMMENCEMENT DATE.—The
21 term ‘benefit commencement date’ means the annu-
22 ity starting date (or in the case of a retroactive an-
23 nuity starting date, the date on which benefit pay-
24 ments begin).”

1 (b) EXCISE TAXES ON FAILURES RELATING TO MUL-
2 TIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STA-
3 TUS.—

4 (1) IN GENERAL.—Section 4971 of the Internal
5 Revenue Code of 1986 is amended by redesignating
6 subsection (g) as subsection (h) and by inserting
7 after subsection (f) the following:

8 “(g) MULTIEMPLOYER PLANS IN ENDANGERED OR
9 CRITICAL STATUS.—

10 “(1) IN GENERAL.—Except as provided in this
11 subsection—

12 “(A) no tax shall be imposed under this
13 section for a taxable year with respect to a mul-
14 tiemployer plan if, for the plan years ending
15 with or within the taxable year, the plan is in
16 critical status pursuant to section 432, and

17 “(B) any tax imposed under this sub-
18 section for a taxable year with respect to a mul-
19 tiemployer plan if, for the plan years ending
20 with or within the taxable year, the plan is in
21 endangered status pursuant to section 432 shall
22 be in addition to any other tax imposed by this
23 section.

24 “(2) FAILURE TO COMPLY WITH FUNDING IM-
25 PROVEDMENT OR REHABILITATION PLAN.—

1 “(A) IN GENERAL.—If any funding im-
2 provement plan or rehabilitation plan in effect
3 under section 432 with respect to a multiem-
4 ployer plan requires an employer to make a
5 contribution to the plan, there is hereby im-
6 posed a tax on each failure of the employer to
7 make the required contribution within the time
8 required under such plan.

9 “(B) AMOUNT OF TAX.—The amount of
10 the tax imposed by subparagraph (A) shall be
11 equal to the amount of the required contribu-
12 tion the employer failed to make in a timely
13 manner.

14 “(C) LIABILITY FOR TAX.—The tax im-
15 posed by subparagraph (A) shall be paid by the
16 employer responsible for contributing to or
17 under the rehabilitation plan which fails to
18 make the contribution.

19 “(3) FAILURE TO MEET REQUIREMENTS FOR
20 PLANS IN ENDANGERED OR CRITICAL STATUS.—If—

21 “(A) a plan which is in seriously endan-
22 gered status fails to meet the applicable bench-
23 marks by the end of the funding improvement
24 period, or

1 “(B) a plan which is in critical status ei-
2 ther—

3 “(i) fails to meet the requirements of
4 section 432(e) by the end of the rehabilita-
5 tion period, or

6 “(ii) has received a certification under
7 section 432(b)(3)(A)(ii) for 3 consecutive
8 plan years that the plan is not making the
9 scheduled progress in meeting its require-
10 ments under the rehabilitation plan,

11 the plan shall be treated as having an accumu-
12 lated funding deficiency for purposes of this
13 section for the last plan year in such funding
14 improvement, rehabilitation, or 3-consecutive
15 year period (and each succeeding plan year
16 until such benchmarks or requirements are
17 met) in an amount equal to the greater of the
18 amount of the contributions necessary to meet
19 such benchmarks or requirements or the
20 amount of such accumulated funding deficiency
21 without regard to this paragraph.

22 “(4) FAILURE TO ADOPT REHABILITATION
23 PLAN.—

24 “(A) IN GENERAL.—In the case of a multi-
25 employer plan which is in critical status, there

1 is hereby imposed a tax on the failure of such
2 plan to adopt a rehabilitation plan within the
3 time prescribed under section 432.

4 “(B) AMOUNT OF TAX.—The amount of
5 the tax imposed under subparagraph (A) with
6 respect to any plan sponsor for any taxable year
7 shall be the greater of—

8 “(i) the amount of tax imposed under
9 subsection (a) for the taxable year (deter-
10 mined without regard to this subsection),
11 or

12 “(ii) the amount equal to \$1,100 mul-
13 tiplied by the number of days during the
14 taxable year which are included in the pe-
15 riod beginning on the first day of the 240-
16 day period described in section
17 432(e)(1)(A) and ending on the day on
18 which the rehabilitation plan is adopted.

19 “(C) LIABILITY FOR TAX.—

20 “(i) IN GENERAL.—The tax imposed
21 by subparagraph (A) shall be paid by each
22 plan sponsor.

23 “(ii) PLAN SPONSOR.—For purposes
24 of clause (i), the term ‘plan sponsor’ in the
25 case of a multiemployer plan means the as-

1 society, committee, joint board of trust-
2 ees, or other similar group of representa-
3 tives of the parties who establish or main-
4 tain the plan.

5 “(5) WAIVER.—In the case of a failure de-
6 scribed in paragraph (2) or (3) which is due to rea-
7 sonable cause and not to willful neglect, the Sec-
8 retary may waive part or all of the tax imposed by
9 this subsection. For purposes of this paragraph, rea-
10 sonable cause includes unanticipated and material
11 market fluctuations, the loss of a significant contrib-
12 uting employer, or other factors to the extent that
13 the payment of tax under this subsection with re-
14 spect to the failure would be excessive or otherwise
15 inequitable relative to the failure involved.

16 “(6) TERMS USED IN SECTION 432.—For pur-
17 poses of this subsection, any term used in this sub-
18 section which is also used in section 432 shall have
19 the meaning given such term by section 432.”.

20 (2) CONTROLLED GROUPS.—Section 4971(c)(2)
21 of such Code is amended—

22 (A) by striking “In the case of a plan
23 other than a multiemployer plan, if the” and in-
24 serting “If an”, and

1 (B) by striking “or (f)” and inserting “(f),
2 or (g)”.

3 (c) NO ADDITIONAL CONTRIBUTION REQUIRED.—
4 Section 412(b) of the Internal Revenue Code of 1986, as
5 amended by this Act, is amended by adding at the end
6 the following new paragraph:

7 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-
8 TUS.—Paragraph (1) shall not apply in the case of
9 a multiemployer plan for any plan year in which the
10 plan is in critical status pursuant to section 432.
11 This paragraph shall only apply if the plan adopts
12 a rehabilitation plan in accordance with section
13 432(e) and complies with such rehabilitation plan
14 (and any modifications of the plan).”

15 (d) CLERICAL AMENDMENT.—The table of sections
16 for subpart A of part III of subchapter D of chapter 1
17 of such Code is amended by adding at the end the fol-
18 lowing new item:

“Sec. 432. Additional funding rules for multiemployer plans in endangered sta-
tus or critical status.”

19 (e) EFFECTIVE DATES.—

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

23 (2) SPECIAL RULE FOR CERTAIN NOTICES.—In
24 any case in which a plan’s actuary certifies that it

1 is reasonably expected that a multiemployer plan will
2 be in critical status under section 305(b)(3) of the
3 Employee Retirement Income Security Act of 1974,
4 as added by this section, with respect to the first
5 plan year beginning after 2007, the notice required
6 under subparagraph (D) of such section may be pro-
7 vided at any time after the date of enactment, so
8 long as it is provided on or before the last date for
9 providing the notice under such subparagraph.

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

12 (A) with respect to which benefits were re-
13 duced pursuant to a plan amendment adopted
14 on or after January 1, 2002, and before June
15 30, 2005, and

16 (B) which, pursuant to the plan document,
17 the trust agreement, or a formal written com-
18 munication from the plan sponsor to partici-
19 pants provided before June 30, 2005, provided
20 for the restoration of such benefits,

21 the amendments made by this section shall not apply
22 to such benefit restorations to the extent that any
23 restriction on the providing or accrual of such bene-
24 fits would otherwise apply by reason of such amend-
25 ments.