

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. 3962

To provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preservation of Access
5 to Care for Medicare Beneficiaries and Pension Relief Act
6 of 2010”.

1 **TITLE I—HEALTH PROVISIONS**

2 **SEC. 101. PHYSICIAN PAYMENT UPDATE.**

3 (a) IN GENERAL.—Section 1848(d) of the Social Se-
4 curity Act (42 U.S.C. 1395w-4(d)) is amended—

5 (1) in paragraph (10), in the heading, by strik-
6 ing “PORTION” and inserting “JANUARY THROUGH
7 MAY ”; and

8 (2) by adding at the end the following new
9 paragraph:

10 “(11) UPDATE FOR JUNE THROUGH NOVEMBER
11 OF 2010.—

12 “(A) IN GENERAL.—Subject to paragraphs
13 (7)(B), (8)(B), (9)(B), and (10)(B), in lieu of
14 the update to the single conversion factor estab-
15 lished in paragraph (1)(C) that would otherwise
16 apply for 2010 for the period beginning on
17 June 1, 2010, and ending on November 30,
18 2010, the update to the single conversion factor
19 shall be 2.2 percent.

20 “(B) NO EFFECT ON COMPUTATION OF
21 CONVERSION FACTOR FOR REMAINING PORTION
22 OF 2010 AND SUBSEQUENT YEARS.—The con-
23 version factor under this subsection shall be
24 computed under paragraph (1)(A) for the pe-
25 riod beginning on December 1, 2010, and end-

1 ing on December 31, 2010, and for 2011 and
2 subsequent years as if subparagraph (A) had
3 never applied.”.

4 (b) **STATUTORY PAYGO.**—The budgetary effects of
5 this Act, for the purpose of complying with the Statutory
6 Pay-As-You-Go Act of 2010, shall be determined by ref-
7 erence to the latest statement titled “Budgetary Effects
8 of PAYGO Legislation” for this Act, jointly submitted for
9 printing in the Congressional Record by the Chairmen of
10 the House and Senate Budget Committees, provided that
11 such statement has been submitted prior to the vote on
12 passage in the House acting first on this conference report
13 or amendment between the Houses.

14 **SEC. 102. CLARIFICATION OF 3-DAY PAYMENT WINDOW.**

15 (a) **IN GENERAL.**—Section 1886 of the Social Secu-
16 rity Act (42 U.S.C. 1395ww) is amended—

17 (1) by adding at the end of subsection (a)(4)
18 the following new sentence: “In applying the first
19 sentence of this paragraph, the term ‘other services
20 related to the admission’ includes all services that
21 are not diagnostic services (other than ambulance
22 and maintenance renal dialysis services) for which
23 payment may be made under this title that are pro-
24 vided by a hospital (or an entity wholly owned or op-
25 erated by the hospital) to a patient—

1 “(A) on the date of the patient’s inpatient
2 admission; or

3 “(B) during the 3 days (or, in the case of
4 a hospital that is not a subsection (d) hospital,
5 during the 1 day) immediately preceding the
6 date of such admission unless the hospital dem-
7 onstrates (in a form and manner, and at a
8 time, specified by the Secretary) that such serv-
9 ices are not related (as determined by the Sec-
10 retary) to such admission.”; and

11 (2) in subsection (d)(7)—

12 (A) in subparagraph (A), by striking
13 “and” at the end;

14 (B) in subparagraph (B), by striking the
15 period and inserting “, and”; and

16 (C) by adding at the end the following new
17 subparagraph:

18 “(C) the determination of whether services
19 provided prior to a patient’s inpatient admis-
20 sion are related to the admission (as described
21 in subsection (a)(4)).”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall apply to services furnished on or after
24 the date of the enactment of this Act.

1 (c) NO REOPENING OF PREVIOUSLY BUNDLED
2 CLAIMS.—

3 (1) IN GENERAL.—The Secretary of Health and
4 Human Services may not reopen a claim, adjust a
5 claim, or make a payment pursuant to any request
6 for payment under title XVIII of the Social Security
7 Act, submitted by an entity (including a hospital or
8 an entity wholly owned or operated by the hospital)
9 for services described in paragraph (2) for purposes
10 of treating, as unrelated to a patient’s inpatient ad-
11 mission, services provided during the 3 days (or, in
12 the case of a hospital that is not a subsection (d)
13 hospital, during the 1 day) immediately preceding
14 the date of the patient’s inpatient admission.

15 (2) SERVICES DESCRIBED.—For purposes of
16 paragraph (1), the services described in this para-
17 graph are other services related to the admission (as
18 described in section 1886(a)(4) of the Social Secu-
19 rity Act (42 U.S.C. 1395ww(a)(4)), as amended by
20 subsection (a)) which were previously included on a
21 claim or request for payment submitted under part
22 A of title XVIII of such Act for which a reopening,
23 adjustment, or request for payment under part B of
24 such title, was not submitted prior to the date of the
25 enactment of this Act.

1 (d) IMPLEMENTATION.—Notwithstanding any other
2 provision of law, the Secretary of Health and Human
3 Services may implement the provisions of this section (and
4 amendments made by this section) by program instruction
5 or otherwise.

6 (e) RULE OF CONSTRUCTION.—Nothing in the
7 amendments made by this section shall be construed as
8 changing the policy described in section 1886(a)(4) of the
9 Social Security Act (42 U.S.C. 1395ww(a)(4)), as applied
10 by the Secretary of Health and Human Services before
11 the date of the enactment of this Act, with respect to diag-
12 nostic services.

13 **TITLE II—PENSION FUNDING**
14 **RELIEF**

15 **Subtitle A—Single Employer Plans**

16 **SEC. 201. EXTENDED PERIOD FOR SINGLE-EMPLOYER DE-**
17 **FINED BENEFIT PLANS TO AMORTIZE CER-**
18 **TAIN SHORTFALL AMORTIZATION BASES.**

19 (a) AMENDMENTS TO ERISA.—

20 (1) IN GENERAL.—Paragraph (2) of section
21 303(c) of the Employee Retirement Income Security
22 Act of 1974 (29 U.S.C. 1083(c)) is amended by add-
23 ing at the end the following subparagraph:

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

1 “(I) in the case of the first 2
2 plan years in the 9-plan-year period
3 beginning with the election year, in-
4 terest on the shortfall amortization
5 base of the plan for the election year
6 (determined using the effective inter-
7 est rate for the plan for the election
8 year), and

9 “(II) in the case of the last 7
10 plan years in such 9-plan-year period,
11 the amounts necessary to amortize the
12 remaining balance of the shortfall am-
13 ortization base of the plan for the
14 election year in level annual install-
15 ments over such last 7 plan years
16 (using the segment rates under sub-
17 paragraph (C) for the election year).

18 “(iii) 15-YEAR AMORTIZATION.—The
19 shortfall amortization installments deter-
20 mined under this subparagraph are the
21 amounts necessary to amortize the short-
22 fall amortization base of the plan for the
23 election year in level annual installments
24 over the 15-plan-year period beginning
25 with the election year (using the segment

1 rates under subparagraph (C) for the elec-
2 tion year).

3 “(iv) ELECTION.—

4 “(I) IN GENERAL.—The plan
5 sponsor of a plan may elect to have
6 this subparagraph apply to not more
7 than 2 eligible plan years with respect
8 to the plan, except that in the case of
9 a plan described in section 106 of the
10 Pension Protection Act of 2006, the
11 plan sponsor may only elect to have
12 this subparagraph apply to a plan
13 year beginning in 2011.

14 “(II) AMORTIZATION SCHED-
15 ULE.—Such election shall specify
16 whether the amortization schedule
17 under clause (ii) or (iii) shall apply to
18 an election year, except that if a plan
19 sponsor elects to have this subpara-
20 graph apply to 2 eligible plan years,
21 the plan sponsor must elect the same
22 schedule for both years.

23 “(III) OTHER RULES.—Such
24 election shall be made at such time,
25 and in such form and manner, as

1 shall be prescribed by the Secretary of
2 the Treasury, and may be revoked
3 only with the consent of the Secretary
4 of the Treasury. The Secretary of the
5 Treasury shall, before granting a rev-
6 ocation request, provide the Pension
7 Benefit Guaranty Corporation an op-
8 portunity to comment on the condi-
9 tions applicable to the treatment of
10 any portion of the election year short-
11 fall amortization base that remains
12 unamortized as of the revocation date.

13 “(v) ELIGIBLE PLAN YEAR.—For pur-
14 poses of this subparagraph, the term ‘eligi-
15 ble plan year’ means any plan year begin-
16 ning in 2008, 2009, 2010, or 2011, except
17 that a plan year shall only be treated as an
18 eligible plan year if the due date under
19 subsection (j)(1) for the payment of the
20 minimum required contribution for such
21 plan year occurs on or after the date of the
22 enactment of this subparagraph.

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

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

4 “(II) inform the Pension Benefit
5 Guaranty Corporation of such election
6 in such form and manner as the Di-
7 rector of the Pension Benefit Guar-
8 anty Corporation may prescribe.

9 “(vii) INCREASES IN REQUIRED IN-
10 STALLMENTS IN CERTAIN CASES.—For in-
11 creases in required contributions in cases
12 of excess compensation or extraordinary
13 dividends or stock redemptions, see para-
14 graph (7).”.

15 (2) INCREASES IN REQUIRED INSTALLMENTS IN
16 CERTAIN CASES.—Section 303(c) of the Employee
17 Retirement Income Security Act of 1974 (29 U.S.C.
18 1083(c)) is amended by adding at the end the fol-
19 lowing paragraph:

20 “(7) INCREASES IN ALTERNATE REQUIRED IN-
21 STALLMENTS IN CASES OF EXCESS COMPENSATION
22 OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMP-
23 TIONS.—

24 “(A) IN GENERAL.—If there is an install-
25 ment acceleration amount with respect to a

1 plan for any plan year in the restriction period
2 with respect to an election year under para-
3 graph (2)(D), then the shortfall amortization
4 installment otherwise determined and payable
5 under such paragraph for such plan year shall,
6 subject to the limitation under subparagraph
7 (B), be increased by such amount.

8 “(B) TOTAL INSTALLMENTS LIMITED TO
9 SHORTFALL BASE.—Subject to rules prescribed
10 by the Secretary of the Treasury, if a shortfall
11 amortization installment with respect to any
12 shortfall amortization base for an election year
13 is required to be increased for any plan year
14 under subparagraph (A)—

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

22 “(ii) subsequent shortfall amortization
23 installments with respect to such base
24 shall, in reverse order of the otherwise re-
25 quired installments, be reduced to the ex-

1 tent necessary to limit the present value of
2 such subsequent shortfall amortization in-
3 stallments (after application of this para-
4 graph) to the present value of the remain-
5 ing unamortized shortfall amortization
6 base.

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

9 “(i) IN GENERAL.—The term ‘install-
10 ment acceleration amount’ means, with re-
11 spect to any plan year in a restriction pe-
12 riod with respect to an election year, the
13 sum of—

14 “(I) the aggregate amount of ex-
15 cess employee compensation deter-
16 mined under subparagraph (D) with
17 respect to all employees for the plan
18 year, plus

19 “(II) the aggregate amount of
20 extraordinary dividends and redemp-
21 tions determined under subparagraph
22 (E) for the plan year.

23 “(ii) ANNUAL LIMITATION.—The in-
24 stallment acceleration amount for any plan

1 year shall not exceed the excess (if any)
2 of—

3 “(I) the sum of the shortfall am-
4 ortization installments for the plan
5 year and all preceding plan years in
6 the amortization period elected under
7 paragraph (2)(D) with respect to the
8 shortfall amortization base with re-
9 spect to an election year, determined
10 without regard to paragraph (2)(D)
11 and this paragraph, over

12 “(II) the sum of the shortfall am-
13 ortization installments for such plan
14 year and all such preceding plan
15 years, determined after application of
16 paragraph (2)(D) (and in the case of
17 any preceding plan year, after applica-
18 tion of this paragraph).

19 “(iii) CARRYOVER OF EXCESS IN-
20 STALLMENT ACCELERATION AMOUNTS.—

21 “(I) IN GENERAL.—If the install-
22 ment acceleration amount for any
23 plan year (determined without regard
24 to clause (ii)) exceeds the limitation
25 under clause (ii), then, subject to sub-

1 clause (II), such excess shall be treat-
2 ed as an installment acceleration
3 amount with respect to the succeeding
4 plan year.

5 “(II) CAP TO APPLY.—If any
6 amount treated as an installment ac-
7 celeration amount under subclause (I)
8 or this subclause with respect any
9 succeeding plan year, when added to
10 other installment acceleration
11 amounts (determined without regard
12 to clause (ii)) with respect to the plan
13 year, exceeds the limitation under
14 clause (ii), the portion of such amount
15 representing such excess shall be
16 treated as an installment acceleration
17 amount with respect to the next suc-
18 ceeding plan year.

19 “(III) LIMITATION ON YEARS TO
20 WHICH AMOUNTS CARRIED FOR.—No
21 amount shall be carried under sub-
22 clause (I) or (II) to a plan year which
23 begins after the first plan year fol-
24 lowing the last plan year in the re-
25 striction period (or after the second

1 plan year following such last plan year
2 in the case of an election year with re-
3 spect to which 15-year amortization
4 was elected under paragraph (2)(D)).

5 “(IV) ORDERING RULES.—For
6 purposes of applying subclause (II),
7 installment acceleration amounts for
8 the plan year (determined without re-
9 gard to any carryover under this
10 clause) shall be applied first against
11 the limitation under clause (ii) and
12 then carryovers to such plan year
13 shall be applied against such limita-
14 tion on a first-in, first-out basis.

15 “(D) EXCESS EMPLOYEE COMPENSA-
16 TION.—For purposes of this paragraph—

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

21 “(I) the aggregate amount in-
22 cludible in income under chapter 1 of
23 the Internal Revenue Code of 1986
24 for remuneration during the calendar
25 year in which such plan year begins

1 for services performed by the em-
2 ployee for the plan sponsor (whether
3 or not performed during such cal-
4 endar year), over

5 “(II) \$1,000,000.

6 “(ii) AMOUNTS SET ASIDE FOR NON-
7 QUALIFIED DEFERRED COMPENSATION.—
8 If during any calendar year assets are set
9 aside or reserved (directly or indirectly) in
10 a trust (or other arrangement as deter-
11 mined by the Secretary of the Treasury),
12 or transferred to such a trust or other ar-
13 rangement, by a plan sponsor for purposes
14 of paying deferred compensation of an em-
15 ployee under a nonqualified deferred com-
16 pensation plan (as defined in section 409A
17 of such Code) of the plan sponsor, then,
18 for purposes of clause (i), the amount of
19 such assets shall be treated as remunera-
20 tion of the employee includible in income
21 for the calendar year unless such amount
22 is otherwise includible in income for such
23 year. An amount to which the preceding
24 sentence applies shall not be taken into ac-

1 count under this paragraph for any subse-
2 quent calendar year.

3 “(iii) ONLY REMUNERATION FOR CER-
4 TAIN POST-2009 SERVICES COUNTED.—Re-
5 munerations shall be taken into account
6 under clause (i) only to the extent attrib-
7 utable to services performed by the em-
8 ployee for the plan sponsor after February
9 28, 2010.

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

12 “(I) IN GENERAL.—There shall
13 not be taken into account under
14 clause (i)(I) any amount includible in
15 income with respect to the granting
16 after February 28, 2010, of service
17 recipient stock (within the meaning of
18 section 409A of the Internal Revenue
19 Code of 1986) that, upon such grant,
20 is subject to a substantial risk of for-
21 feiture (as defined under section
22 83(c)(1) of such Code) for at least 5
23 years from the date of such grant.

24 “(II) SECRETARIAL AUTHOR-
25 ITY.—The Secretary of the Treasury

1 may by regulation provide for the ap-
2 plication of this clause in the case of
3 a person other than a corporation.

4 “(v) OTHER EXCEPTIONS.—The fol-
5 lowing amounts includible in income shall
6 not be taken into account under clause
7 (i)(I):

8 “(I) COMMISSIONS.—Any remu-
9 neration payable on a commission
10 basis solely on account of income di-
11 rectly generated by the individual per-
12 formance of the individual to whom
13 such remuneration is payable.

14 “(II) CERTAIN PAYMENTS UNDER
15 EXISTING CONTRACTS.—Any remu-
16 neration consisting of nonqualified de-
17 ferred compensation, restricted stock,
18 stock options, or stock appreciation
19 rights payable or granted under a
20 written binding contract that was in
21 effect on March 1, 2010, and which
22 was not modified in any material re-
23 spect before such remuneration is
24 paid.

1 “(vi) SELF-EMPLOYED INDIVIDUAL
2 TREATED AS EMPLOYEE.—The term ‘em-
3 ployee’ includes, with respect to a calendar
4 year, a self-employed individual who is
5 treated as an employee under section
6 401(c) of such Code for the taxable year
7 ending during such calendar year, and the
8 term ‘compensation’ shall include earned
9 income of such individual with respect to
10 such self-employment.

11 “(vii) INDEXING OF AMOUNT.—In the
12 case of any calendar year beginning after
13 2010, the dollar amount under clause
14 (i)(II) shall be increased by an amount
15 equal to—

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

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

24 If the amount of any increase under clause
25 (i) is not a multiple of \$1,000, such in-

1 crease shall be rounded to the next lowest
2 multiple of \$1,000.

3 “(E) EXTRAORDINARY DIVIDENDS AND
4 REDEMPTIONS.—

5 “(i) IN GENERAL.—The amount de-
6 termined under this subparagraph for any
7 plan year is the excess (if any) of the sum
8 of the dividends declared during the plan
9 year by the plan sponsor plus the aggre-
10 gate amount paid for the redemption of
11 stock of the plan sponsor redeemed during
12 the plan year over the greater of—

13 “(I) the adjusted net income
14 (within the meaning of section 4043)
15 of the plan sponsor for the preceding
16 plan year, determined without regard
17 to any reduction by reason of interest,
18 taxes, depreciation, or amortization,
19 or

20 “(II) in the case of a plan spon-
21 sor that determined and declared divi-
22 dends in the same manner for at least
23 5 consecutive years immediately pre-
24 ceding such plan year, the aggregate
25 amount of dividends determined and

1 declared for such plan year using such
2 manner.

3 “(ii) ONLY CERTAIN POST-2009 DIVI-
4 DENDS AND REDEMPTIONS COUNTED.—
5 For purposes of clause (i), there shall only
6 be taken into account dividends declared,
7 and redemptions occurring, after February
8 28, 2010.

9 “(iii) EXCEPTION FOR INTRA-GROUP
10 DIVIDENDS.—Dividends paid by one mem-
11 ber of a controlled group (as defined in
12 section 302(d)(3)) to another member of
13 such group shall not be taken into account
14 under clause (i).

15 “(iv) EXCEPTION FOR CERTAIN RE-
16 DEMPTIONS.—Redemptions that are made
17 pursuant to a plan maintained with respect
18 to employees, or that are made on account
19 of the death, disability, or termination of
20 employment of an employee or shareholder,
21 shall not be taken into account under
22 clause (i).

23 “(v) EXCEPTION FOR CERTAIN PRE-
24 FERRED STOCK.—

1 “(I) IN GENERAL.—Dividends
2 and redemptions with respect to appli-
3 cable preferred stock shall not be
4 taken into account under clause (i) to
5 the extent that dividends accrue with
6 respect to such stock at a specified
7 rate in all events and without regard
8 to the plan sponsor’s income, and in-
9 terest accrues on any unpaid divi-
10 dends with respect to such stock.

11 “(II) APPLICABLE PREFERRED
12 STOCK.—For purposes of subclause
13 (I), the term ‘applicable preferred
14 stock’ means preferred stock which
15 was issued before March 1, 2010 (or
16 which was issued after such date and
17 is held by an employee benefit plan
18 subject to the provisions of this title).

19 “(F) OTHER DEFINITIONS AND RULES.—
20 For purposes of this paragraph—

21 “(i) PLAN SPONSOR.—The term ‘ plan
22 sponsor’ includes any member of the plan
23 sponsor’s controlled group (as defined in
24 section 302(d)(3)).

1 “(ii) RESTRICTION PERIOD.—The
2 term ‘restriction period’ means, with re-
3 spect to any election year—

4 “(I) except as provided in sub-
5 clause (II), the 3-year period begin-
6 ning with the election year (or, if
7 later, the first plan year beginning
8 after December 31, 2009), and

9 “(II) if the plan sponsor elects
10 15-year amortization for the shortfall
11 amortization base for the election
12 year, the 5-year period beginning with
13 the election year (or, if later, the first
14 plan year beginning after December
15 31, 2009).

16 “(iii) ELECTIONS FOR MULTIPLE
17 PLANS.—If a plan sponsor makes elections
18 under paragraph (2)(D) with respect to 2
19 or more plans, the Secretary of the Treas-
20 ury shall provide rules for the application
21 of this paragraph to such plans, including
22 rules for the ratable allocation of any in-
23 stallment acceleration amount among such
24 plans on the basis of each plan’s relative
25 reduction in the plan’s shortfall amortiza-

1 without regard to any increase under subsection
2 (e)(7).”.

3 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
4 1986.—

5 (1) IN GENERAL.—Paragraph (2) of section
6 430(c) is amended by adding at the end the fol-
7 lowing subparagraph:

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

10 “(i) IN GENERAL.—If a plan sponsor
11 elects to apply this subparagraph with re-
12 spect to the shortfall amortization base of
13 a plan for any eligible plan year (in this
14 subparagraph and paragraph (7) referred
15 to as an ‘election year’), then, notwith-
16 standing subparagraphs (A) and (B)—

17 “(I) the shortfall amortization in-
18 stallments with respect to such base
19 shall be determined under clause (ii)
20 or (iii), whichever is specified in the
21 election, and

22 “(II) the shortfall amortization
23 installment for any plan year in the 9-
24 plan-year period described in clause
25 (ii) or the 15-plan-year period de-

1 scribed in clause (iii), respectively,
2 with respect to such shortfall amorti-
3 zation base is the annual installment
4 determined under the applicable
5 clause for that year for that base.

6 “(ii) 2 PLUS 7 AMORTIZATION SCHED-
7 ULE.—The shortfall amortization install-
8 ments determined under this clause are—

9 “(I) in the case of the first 2
10 plan years in the 9-plan-year period
11 beginning with the election year, in-
12 terest on the shortfall amortization
13 base of the plan for the election year
14 (determined using the effective inter-
15 est rate for the plan for the election
16 year), and

17 “(II) in the case of the last 7
18 plan years in such 9-plan-year period,
19 the amounts necessary to amortize the
20 remaining balance of the shortfall am-
21 ortization base of the plan for the
22 election year in level annual install-
23 ments over such last 7 plan years
24 (using the segment rates under sub-
25 paragraph (C) for the election year).

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

11 “(iv) ELECTION.—

12 “(I) IN GENERAL.—The plan
13 sponsor of a plan may elect to have
14 this subparagraph apply to not more
15 than 2 eligible plan years with respect
16 to the plan, except that in the case of
17 a plan described in section 106 of the
18 Pension Protection Act of 2006, the
19 plan sponsor may only elect to have
20 this subparagraph apply to a plan
21 year beginning in 2011.

22 “(II) AMORTIZATION SCHED-
23 ULE.—Such election shall specify
24 whether the amortization schedule
25 under clause (ii) or (iii) shall apply to

1 an election year, except that if a plan
2 sponsor elects to have this subpara-
3 graph apply to 2 eligible plan years,
4 the plan sponsor must elect the same
5 schedule for both years.

6 “(III) OTHER RULES.—Such
7 election shall be made at such time,
8 and in such form and manner, as
9 shall be prescribed by the Secretary,
10 and may be revoked only with the
11 consent of the Secretary. The Sec-
12 retary shall, before granting a revoca-
13 tion request, provide the Pension Ben-
14 efit Guaranty Corporation an oppor-
15 tunity to comment on the conditions
16 applicable to the treatment of any
17 portion of the election year shortfall
18 amortization base that remains
19 unamortized as of the revocation date.

20 “(v) ELIGIBLE PLAN YEAR.—For pur-
21 poses of this subparagraph, the term ‘eligi-
22 ble plan year’ means any plan year begin-
23 ning in 2008, 2009, 2010, or 2011, except
24 that a plan year shall only be treated as an
25 eligible plan year if the due date under

1 subsection (j)(1) for the payment of the
2 minimum required contribution for such
3 plan year occurs on or after the date of the
4 enactment of this subparagraph.

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

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

11 “(II) inform the Pension Benefit
12 Guaranty Corporation of such election
13 in such form and manner as the Di-
14 rector of the Pension Benefit Guar-
15 anty Corporation may prescribe.

16 “(vii) INCREASES IN REQUIRED IN-
17 STALLMENTS IN CERTAIN CASES.—For in-
18 creases in required contributions in cases
19 of excess compensation or extraordinary
20 dividends or stock redemptions, see para-
21 graph (7).”.

22 (2) INCREASES IN REQUIRED CONTRIBUTIONS
23 IF EXCESS COMPENSATION PAID.—Section 430(c) is
24 amended by adding at the end the following para-
25 graph:

1 “(7) INCREASES IN ALTERNATE REQUIRED IN-
2 STALLMENTS IN CASES OF EXCESS COMPENSATION
3 OR EXTRAORDINARY DIVIDENDS OR STOCK REDEMP-
4 TIONS.—

5 “(A) IN GENERAL.—If there is an install-
6 ment acceleration amount with respect to a
7 plan for any plan year in the restriction period
8 with respect to an election year under para-
9 graph (2)(D), then the shortfall amortization
10 installment otherwise determined and payable
11 under such paragraph for such plan year shall,
12 subject to the limitation under subparagraph
13 (B), be increased by such amount.

14 “(B) TOTAL INSTALLMENTS LIMITED TO
15 SHORTFALL BASE.—Subject to rules prescribed
16 by the Secretary, if a shortfall amortization in-
17 stallment with respect to any shortfall amorti-
18 zation base for an election year is required to
19 be increased for any plan year under subpara-
20 graph (A)—

21 “(i) such increase shall not result in
22 the amount of such installment exceeding
23 the present value of such installment and
24 all succeeding installments with respect to
25 such base (determined without regard to

1 such increase but after application of
2 clause (ii)), and

3 “(ii) subsequent shortfall amortization
4 installments with respect to such base
5 shall, in reverse order of the otherwise re-
6 quired installments, be reduced to the ex-
7 tent necessary to limit the present value of
8 such subsequent shortfall amortization in-
9 stallments (after application of this para-
10 graph) to the present value of the remain-
11 ing unamortized shortfall amortization
12 base.

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

15 “(i) IN GENERAL.—The term ‘install-
16 ment acceleration amount’ means, with re-
17 spect to any plan year in a restriction pe-
18 riod with respect to an election year, the
19 sum of—

20 “(I) the aggregate amount of ex-
21 cess employee compensation deter-
22 mined under subparagraph (D) with
23 respect to all employees for the plan
24 year, plus

1 “(II) the aggregate amount of
2 extraordinary dividends and redemp-
3 tions determined under subparagraph
4 (E) for the plan year.

5 “(ii) ANNUAL LIMITATION.—The in-
6 stallment acceleration amount for any plan
7 year shall not exceed the excess (if any)
8 of—

9 “(I) the sum of the shortfall am-
10 ortization installments for the plan
11 year and all preceding plan years in
12 the amortization period elected under
13 paragraph (2)(D) with respect to the
14 shortfall amortization base with re-
15 spect to an election year, determined
16 without regard to paragraph (2)(D)
17 and this paragraph, over

18 “(II) the sum of the shortfall am-
19 ortization installments for such plan
20 year and all such preceding plan
21 years, determined after application of
22 paragraph (2)(D) (and in the case of
23 any preceding plan year, after applica-
24 tion of this paragraph).

1 “(iii) CARRYOVER OF EXCESS IN-
2 STALLMENT ACCELERATION AMOUNTS.—

3 “(I) IN GENERAL.—If the install-
4 ment acceleration amount for any
5 plan year (determined without regard
6 to clause (ii)) exceeds the limitation
7 under clause (ii), then, subject to sub-
8 clause (II), such excess shall be treat-
9 ed as an installment acceleration
10 amount with respect to the succeeding
11 plan year.

12 “(II) CAP TO APPLY.—If any
13 amount treated as an installment ac-
14 celeration amount under subclause (I)
15 or this subclause with respect any
16 succeeding plan year, when added to
17 other installment acceleration
18 amounts (determined without regard
19 to clause (ii)) with respect to the plan
20 year, exceeds the limitation under
21 clause (ii), the portion of such amount
22 representing such excess shall be
23 treated as an installment acceleration
24 amount with respect to the next suc-
25 ceeding plan year.

1 “(III) LIMITATION ON YEARS TO
2 WHICH AMOUNTS CARRIED FOR.—No
3 amount shall be carried under sub-
4 clause (I) or (II) to a plan year which
5 begins after the first plan year fol-
6 lowing the last plan year in the re-
7 striction period (or after the second
8 plan year following such last plan year
9 in the case of an election year with re-
10 spect to which 15-year amortization
11 was elected under paragraph (2)(D)).

12 “(IV) ORDERING RULES.—For
13 purposes of applying subclause (II),
14 installment acceleration amounts for
15 the plan year (determined without re-
16 gard to any carryover under this
17 clause) shall be applied first against
18 the limitation under clause (ii) and
19 then carryovers to such plan year
20 shall be applied against such limita-
21 tion on a first-in, first-out basis.

22 “(D) EXCESS EMPLOYEE COMPENSA-
23 TION.—For purposes of this paragraph—

24 “(i) IN GENERAL.—The term ‘excess
25 employee compensation’ means, with re-

1 spect to any employee for any plan year,
2 the excess (if any) of—

3 “(I) the aggregate amount in-
4 cludible in income under this chapter
5 for remuneration during the calendar
6 year in which such plan year begins
7 for services performed by the em-
8 ployee for the plan sponsor (whether
9 or not performed during such cal-
10 endar year), over

11 “(II) \$1,000,000.

12 “(ii) AMOUNTS SET ASIDE FOR NON-
13 QUALIFIED DEFERRED COMPENSATION.—
14 If during any calendar year assets are set
15 aside or reserved (directly or indirectly) in
16 a trust (or other arrangement as deter-
17 mined by the Secretary), or transferred to
18 such a trust or other arrangement, by a
19 plan sponsor for purposes of paying de-
20 ferred compensation of an employee under
21 a nonqualified deferred compensation plan
22 (as defined in section 409A) of the plan
23 sponsor, then, for purposes of clause (i),
24 the amount of such assets shall be treated
25 as remuneration of the employee includible

1 in income for the calendar year unless such
2 amount is otherwise includible in income
3 for such year. An amount to which the
4 preceding sentence applies shall not be
5 taken into account under this paragraph
6 for any subsequent calendar year.

7 “(iii) ONLY REMUNERATION FOR CER-
8 TAIN POST-2009 SERVICES COUNTED.—Re-
9 munerations shall be taken into account
10 under clause (i) only to the extent attrib-
11 utable to services performed by the em-
12 ployee for the plan sponsor after February
13 28, 2010.

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

16 “(I) IN GENERAL.—There shall
17 not be taken into account under
18 clause (i)(I) any amount includible in
19 income with respect to the granting
20 after February 28, 2010, of service
21 recipient stock (within the meaning of
22 section 409A) that, upon such grant,
23 is subject to a substantial risk of for-
24 feiture (as defined under section

1 83(c)(1)) for at least 5 years from the
2 date of such grant.

3 “(II) SECRETARIAL AUTHOR-
4 ITY.—The Secretary may by regula-
5 tion provide for the application of this
6 clause in the case of a person other
7 than a corporation.

8 “(v) OTHER EXCEPTIONS.—The fol-
9 lowing amounts includible in income shall
10 not be taken into account under clause
11 (i)(I):

12 “(I) COMMISSIONS.—Any remu-
13 nation payable on a commission
14 basis solely on account of income di-
15 rectly generated by the individual per-
16 formance of the individual to whom
17 such remuneration is payable.

18 “(II) CERTAIN PAYMENTS UNDER
19 EXISTING CONTRACTS.—Any remu-
20 nation consisting of nonqualified de-
21 ferred compensation, restricted stock,
22 stock options, or stock appreciation
23 rights payable or granted under a
24 written binding contract that was in
25 effect on March 1, 2010, and which

1 ‘calendar year 1992’ in subparagraph
2 (B) thereof.

3 If the amount of any increase under clause
4 (i) is not a multiple of \$1,000, such in-
5 crease shall be rounded to the next lowest
6 multiple of \$1,000.

7 “(E) EXTRAORDINARY DIVIDENDS AND
8 REDEMPTIONS.—

9 “(i) IN GENERAL.—The amount de-
10 termined under this subparagraph for any
11 plan year is the excess (if any) of the sum
12 of the dividends declared during the plan
13 year by the plan sponsor plus the aggre-
14 gate amount paid for the redemption of
15 stock of the plan sponsor redeemed during
16 the plan year over the greater of—

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

1 “(II) in the case of a plan spon-
2 sor that determined and declared divi-
3 dends in the same manner for at least
4 5 consecutive years immediately pre-
5 ceding such plan year, the aggregate
6 amount of dividends determined and
7 declared for such plan year using such
8 manner.

9 “(ii) ONLY CERTAIN POST-2009 DIVI-
10 DENDS AND REDEMPTIONS COUNTED.—
11 For purposes of clause (i), there shall only
12 be taken into account dividends declared,
13 and redemptions occurring, after February
14 28, 2010.

15 “(iii) EXCEPTION FOR INTRA-GROUP
16 DIVIDENDS.—Dividends paid by one mem-
17 ber of a controlled group (as defined in
18 section 412(d)(3)) to another member of
19 such group shall not be taken into account
20 under clause (i).

21 “(iv) EXCEPTION FOR CERTAIN RE-
22 DEMPTIONS.—Redemptions that are made
23 pursuant to a plan maintained with respect
24 to employees, or that are made on account
25 of the death, disability, or termination of

1 employment of an employee or shareholder,
2 shall not be taken into account under
3 clause (i).

4 “(v) EXCEPTION FOR CERTAIN PRE-
5 FERRED STOCK.—

6 “(I) IN GENERAL.—Dividends
7 and redemptions with respect to appli-
8 cable preferred stock shall not be
9 taken into account under clause (i) to
10 the extent that dividends accrue with
11 respect to such stock at a specified
12 rate in all events and without regard
13 to the plan sponsor’s income, and in-
14 terest accrues on any unpaid divi-
15 dends with respect to such stock.

16 “(II) APPLICABLE PREFERRED
17 STOCK.—For purposes of subclause
18 (I), the term ‘applicable preferred
19 stock’ means preferred stock which
20 was issued before March 1, 2010 (or
21 which was issued after such date and
22 is held by an employee benefit plan
23 subject to the provisions of title I of
24 Employee Retirement Income Security
25 Act of 1974).

1 “(F) OTHER DEFINITIONS AND RULES.—

2 For purposes of this paragraph—

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

7 “(ii) RESTRICTION PERIOD.—The
8 term ‘restriction period’ means, with re-
9 spect to any election year—

10 “(I) except as provided in sub-
11 clause (II), the 3-year period begin-
12 ning with the election year (or, if
13 later, the first plan year beginning
14 after December 31, 2009), and

15 “(II) if the plan sponsor elects
16 15-year amortization for the shortfall
17 amortization base for the election
18 year, the 5-year period beginning with
19 the election year (or, if later, the first
20 plan year beginning after December
21 31, 2009).

22 “(iii) ELECTIONS FOR MULTIPLE
23 PLANS.—If a plan sponsor makes elections
24 under paragraph (2)(D) with respect to 2
25 or more plans, the Secretary shall provide

1 rules for the application of this paragraph
2 to such plans, including rules for the rat-
3 able allocation of any installment accelera-
4 tion amount among such plans on the
5 basis of each plan's relative reduction in
6 the plan's shortfall amortization install-
7 ment for the first plan year in the amorti-
8 zation period described in subparagraph
9 (A) (determined without regard to this
10 paragraph).

11 “(iv) MERGERS AND ACQUISITIONS.—
12 The Secretary shall prescribe rules for the
13 application of paragraph (2)(D) and this
14 paragraph in any case where there is a
15 merger or acquisition involving a plan
16 sponsor making the election under para-
17 graph (2)(D).”.

18 (3) CONFORMING AMENDMENTS.—Section 430
19 is amended—

20 (A) in subsection (c)(1), by striking “the
21 shortfall amortization bases for such plan year
22 and each of the 6 preceding plan years” and in-
23 serting “any shortfall amortization base which
24 has not been fully amortized under this sub-
25 section”, and

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

3 “(F) QUARTERLY CONTRIBUTIONS NOT TO
4 INCLUDE CERTAIN INCREASED CONTRIBU-
5 TIONS.—Subparagraph (D) shall be applied
6 without regard to any increase under subsection
7 (c)(7).”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to plan years beginning after De-
10 cember 31, 2007.

11 **SEC. 202. APPLICATION OF EXTENDED AMORTIZATION PE-**
12 **RIOD TO PLANS SUBJECT TO PRIOR LAW**
13 **FUNDING RULES.**

14 (a) IN GENERAL.—Title I of the Pension Protection
15 Act of 2006 is amended by redesignating section 107 as
16 section 108 and by inserting the following after section
17 106:

18 **“SEC. 107. APPLICATION OF EXTENDED AMORTIZATION PE-**
19 **RIODS TO PLANS WITH DELAYED EFFECTIVE**
20 **DATE.**

21 “(a) IN GENERAL.—If the plan sponsor of a plan to
22 which section 104, 105, or 106 of this Act applies elects
23 to have this section apply for any eligible plan year (in
24 this section referred to as an ‘election year’), section 302
25 of the Employee Retirement Income Security Act of 1974

1 and section 412 of the Internal Revenue Code of 1986
2 (as in effect before the amendments made by this subtitle
3 and subtitle B) shall apply to such year in the manner
4 described in subsection (b) or (c), whichever is specified
5 in the election. All references in this section to ‘such Act’
6 or ‘such Code’ shall be to such Act or such Code as in
7 effect before the amendments made by this subtitle and
8 subtitle B.

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

11 “(1) 2-YEAR LOOKBACK FOR DETERMINING
12 DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN
13 PLANS.—For purposes of applying section 302(d)(9)
14 of such Act and section 412(l)(9) of such Code, the
15 funded current liability percentage (as defined in
16 subparagraph (C) thereof) for such plan for such
17 plan year shall be such funded current liability per-
18 centage of such plan for the second plan year pre-
19 ceding the first election year of such plan.

20 “(2) CALCULATION OF DEFICIT REDUCTION
21 CONTRIBUTION.—For purposes of applying section
22 302(d) of such Act and section 412(l) of such Code
23 to a plan to which such sections apply (after taking
24 into account paragraph (1))—

1 “(A) in the case of the increased unfunded
2 new liability of the plan, the applicable percent-
3 age described in section 302(d)(4)(C) of such
4 Act and section 412(l)(4)(C) of such Code shall
5 be the third segment rate described in sections
6 104(b), 105(b), and 106(b) of this Act, and

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

12 “(c) APPLICATION OF 15-YEAR AMORTIZATION.—In
13 the case of an election year to which this subsection ap-
14 plies, for purposes of applying section 302(d) of such Act
15 and section 412(l) of such Code—

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

22 “(A) the annual installments payable in
23 each year if the increased unfunded new liabil-
24 ity for such plan year were amortized over 15
25 years, using an interest rate equal to the third

1 segment rate described in sections 104(b),
2 105(b), and 106(b) of this Act, to

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

5 “(2) in the case of the excess of the unfunded
6 new liability over the increased unfunded new liabil-
7 ity, such applicable percentage shall be determined
8 without regard to this section.

9 “(d) ELECTION.—

10 “(1) IN GENERAL.—The plan sponsor of a plan
11 may elect to have this section apply to not more
12 than 2 eligible plan years with respect to the plan,
13 except that in the case of a plan to which section
14 106 of this Act applies, the plan sponsor may only
15 elect to have this section apply to 1 eligible plan
16 year.

17 “(2) AMORTIZATION SCHEDULE.—Such election
18 shall specify whether the rules under subsection (b)
19 or (c) shall apply to an election year, except that if
20 a plan sponsor elects to have this section apply to
21 2 eligible plan years, the plan sponsor must elect the
22 same rule for both years.

23 “(3) OTHER RULES.—Such election shall be
24 made at such time, and in such form and manner,
25 as shall be prescribed by the Secretary of the Treas-

1 ury, and may be revoked only with the consent of
2 the Secretary of the Treasury.

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

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

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

17 “(3) INCREASED UNFUNDED NEW LIABILITY.—
18 The term ‘increased unfunded new liability’ means,
19 with respect to a year, the excess (if any) of the un-
20 funded new liability over the amount of unfunded
21 new liability determined as if the value of the plan’s
22 assets determined under subsection 302(c)(2) of
23 such Act and section 412(c)(2) of such Code equaled
24 the product of the current liability of the plan for
25 the year multiplied by the funded current liability

1 percentage (as defined in section 302(d)(8)(B) of
2 such Act and 412(l)(8)(B) of such Code) of the plan
3 for the second plan year preceding the first election
4 year of such plan.

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

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

11 (1) by striking “eligible cooperative plan” wher-
12 ever it appears in subsections (a) and (b) and insert-
13 ing “eligible cooperative plan or an eligible charity
14 plan”, and

15 (2) by adding at the end the following new sub-
16 section:

17 “(d) ELIGIBLE CHARITY PLAN DEFINED.—For pur-
18 poses of this section, a plan shall be treated as an eligible
19 charity plan for a plan year if the plan is maintained by
20 more than one employer (determined without regard to
21 section 414(c) of the Internal Revenue Code) and 100 per-
22 cent of the employers are described in section 501(e)(3)
23 of such Code.”.

24 (c) EFFECTIVE DATE.—

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

4 (2) ELIGIBLE CHARITY PLAN.—The amend-
5 ments made by subsection (b) shall apply to plan
6 years beginning after December 31, 2007, except
7 that a plan sponsor may elect to apply such amend-
8 ments to plan years beginning after December 31,
9 2008. Any such election shall be made at such time,
10 and in such form and manner, as shall be prescribed
11 by the Secretary of the Treasury, and may be re-
12 voked only with the consent of the Secretary of the
13 Treasury.

14 **SEC. 203. LOOKBACK FOR CERTAIN BENEFIT RESTRIC-**
15 **TIONS.**

16 (a) IN GENERAL.—

17 (1) AMENDMENT TO ERISA.—Section 206(g)(9)
18 of the Employee Retirement Income Security Act of
19 1974 is amended by adding at the end the following:

20 “(D) SPECIAL RULE FOR CERTAIN
21 YEARS.—Solely for purposes of any applicable
22 provision—

23 “(i) IN GENERAL.—For plan years be-
24 ginning on or after October 1, 2008, and
25 before October 1, 2010, the adjusted fund-

1 ing target attainment percentage of a plan
2 shall be the greater of—

3 “**(I)** such percentage, as deter-
4 mined without regard to this subpara-
5 graph, or

6 “**(II)** the adjusted funding target
7 attainment percentage for such plan
8 for the plan year beginning after Oc-
9 tober 1, 2007, and before October 1,
10 2008, as determined under rules pre-
11 scribed by the Secretary of the Treas-
12 ury.

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

16 “(I) clause (i) shall apply to plan
17 years beginning after December 31,
18 2007, and before January 1, 2010,
19 and

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

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

4 “(I) paragraph (3), but only for
5 purposes of applying such paragraph
6 to a payment which, as determined
7 under rules prescribed by the Sec-
8 retary of the Treasury, is a payment
9 under a social security leveling option
10 which accelerates payments under the
11 plan before, and reduces payments
12 after, a participant starts receiving so-
13 cial security benefits in order to pro-
14 vide substantially similar aggregate
15 payments both before and after such
16 benefits are received, and

17 “(II) paragraph (4).”.

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

22 “(3) SPECIAL RULE FOR CERTAIN YEARS.—
23 Solely for purposes of any applicable provision—

24 “(A) IN GENERAL.—For plan years begin-
25 ning on or after October 1, 2008, and before

1 October 1, 2010, the adjusted funding target
2 attainment percentage of a plan shall be the
3 greater of—

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

6 “(ii) the adjusted funding target at-
7 tainment percentage for such plan for the
8 plan year beginning after October 1, 2007,
9 and before October 1, 2008, as determined
10 under rules prescribed by the Secretary.

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

14 “(i) subparagraph (A) shall apply to
15 plan years beginning after December 31,
16 2007, and before January 1, 2010, and

17 “(ii) subparagraph (A)(ii) shall apply
18 based on the last plan year beginning be-
19 fore November 1, 2007, as determined
20 under rules prescribed by the Secretary.

21 “(C) APPLICABLE PROVISION.—For pur-
22 poses of this paragraph, the term ‘applicable
23 provision’ means—

24 “(i) subsection (d), but only for pur-
25 poses of applying such paragraph to a pay-

1 ment which, as determined under rules
2 prescribed by the Secretary, is a payment
3 under a social security leveling option
4 which accelerates payments under the plan
5 before, and reduces payments after, a par-
6 ticipant starts receiving social security ben-
7 efits in order to provide substantially simi-
8 lar aggregate payments both before and
9 after such benefits are received, and
10 “(ii) subsection (e).”.

11 (b) INTERACTION WITH WRERA RULE.—Section 203
12 of the Worker, Retiree, and Employer Recovery Act of
13 2008 shall apply to a plan for any plan year in lieu of
14 the amendments made by this section applying to sections
15 206(g)(4) of the Employee Retirement Income Security
16 Act of 1974 and 436(e) of the Internal Revenue Code of
17 1986 only to the extent that such section produces a high-
18 er adjusted funding target attainment percentage for such
19 plan for such year.

20 (c) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the amendments made by this section
23 shall apply to plan years beginning on or after Octo-
24 ber 1, 2008.

1 31, 2007, and before September 1,
2 2008, as determined under rules pre-
3 scribed by the Secretary of the Treas-
4 ury.

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

8 “(I) clause (i) shall apply to plan
9 years beginning after December 31,
10 2008, and before January 1, 2011,
11 and

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

17 “(iii) LIMITATION TO CHARITIES.—
18 This subparagraph shall not apply to any
19 plan unless such plan is maintained exclu-
20 sively by one or more organizations de-
21 scribed in section 501(c)(3) of the Internal
22 Revenue Code of 1986.”.

23 (b) AMENDMENT TO INTERNAL REVENUE CODE OF
24 1986.—Paragraph (3) of section 430(f) of the Internal

1 Revenue Code of 1986 is amended by adding the following
2 at the end thereof:

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

5 “(i) IN GENERAL.—For purposes of
6 applying subparagraph (C) for plan years
7 beginning after August 31, 2009, and be-
8 fore September 1, 2011, the ratio deter-
9 mined under such subparagraph for the
10 preceding plan year of a plan shall be the
11 greater of—

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

14 “(II) the ratio for such plan for
15 the plan year beginning after August
16 31, 2007 and before September 1,
17 2008, as determined under rules pre-
18 scribed by the Secretary.

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

22 “(I) clause (i) shall apply to plan
23 years beginning after December 31,
24 2007, and before January 1, 2010,
25 and

1 “(II) clause (i)(II) shall apply
2 based on the last plan year beginning
3 before September 1, 2007, as deter-
4 mined under rules prescribed by the
5 Secretary.

6 “(iii) LIMITATION TO CHARITIES.—
7 This subparagraph shall not apply to any
8 plan unless such plan is maintained exclu-
9 sively by one or more organizations de-
10 scribed in section 501(c)(3).”.

11 (c) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), the amendments made by this section
14 shall apply to plan years beginning after August 31,
15 2009.

16 (2) SPECIAL RULE.—In the case of a plan for
17 which the valuation date is not the first day of the
18 plan year, the amendments made by this section
19 shall apply to plan years beginning after December
20 31, 2008.

21 **Subtitle B—Multiemployer Plans**

22 **SEC. 211. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT** 23 **RULES.**

24 (a) ADJUSTMENTS.—

1 (1) AMENDMENT TO ERISA.—Section 304(b) of
2 the Employee Retirement Income Security Act of
3 1974 (29 U.S.C. 1084(b)) is amended by adding at
4 the end the following new paragraph:

5 “(8) SPECIAL RELIEF RULES.—Notwith-
6 standing any other provision of this subsection—

7 “(A) AMORTIZATION OF NET INVESTMENT
8 LOSSES.—

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

20 “(I) beginning with the plan year
21 in which such portion is first recog-
22 nized in the actuarial value of assets,
23 and

24 “(II) ending with the last plan
25 year in the 30-plan year period begin-

1 ning with the plan year in which such
2 net investment loss was incurred.

3 “(ii) COORDINATION WITH EXTEN-
4 SIONS.—If this subparagraph applies for
5 any plan year—

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

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

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

18 “ (I) IN GENERAL.—Net invest-
19 ment losses shall be determined in the
20 manner prescribed by the Secretary of
21 the Treasury on the basis of the dif-
22 ference between actual and expected
23 returns (including any difference at-
24 tributable to any criminally fraudulent
25 investment arrangement).

1 “(II) CRIMINALLY FRAUDULENT
2 INVESTMENT ARRANGEMENTS.—The
3 determination as to whether an ar-
4 rangement is a criminally fraudulent
5 investment arrangement shall be made
6 under rules substantially similar to
7 the rules prescribed by the Secretary
8 of the Treasury for purposes of sec-
9 tion 165 of the Internal Revenue Code
10 of 1986.

11 “(B) EXPANDED SMOOTHING PERIOD.—

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

17 “(I) spreads the difference be-
18 tween expected and actual returns for
19 either or both of the first 2 plan years
20 ending after August 31, 2008, over a
21 period of not more than 10 years,

22 “(II) provides that for either or
23 both of the first 2 plan years begin-
24 ning after August 31, 2008, the value
25 of plan assets at any time shall not be

1 less than 80 percent or greater than
2 130 percent of the fair market value
3 of such assets at such time, or

4 “(III) makes both changes de-
5 scribed in subclauses (I) and (II) to
6 such method.

7 “(ii) ASSET VALUATION METHODS.—
8 If this subparagraph applies for any plan
9 year—

10 “(I) the Secretary of the Treas-
11 ury shall not treat the asset valuation
12 method of the plan as unreasonable
13 solely because of the changes in such
14 method described in clause (i), and

15 “(II) such changes shall be
16 deemed approved by such Secretary
17 under section 302(d)(1) and section
18 412(d)(1) of such Code.

19 “(iii) AMORTIZATION OF REDUCTION
20 IN UNFUNDED ACCRUED LIABILITY.—If
21 this subparagraph and subparagraph (A)
22 both apply for any plan year, the plan shall
23 treat any reduction in unfunded accrued li-
24 ability resulting from the application of
25 this subparagraph as a separate experience

1 the application of this paragraph to
2 the plan, and

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

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

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

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

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

1 ning with the plan year in which such
2 net investment loss was incurred.

3 “(ii) COORDINATION WITH EXTEN-
4 SIONS.—If this subparagraph applies for
5 any plan year—

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

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

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

18 “ (I) IN GENERAL.—Net invest-
19 ment losses shall be determined in the
20 manner prescribed by the Secretary
21 on the basis of the difference between
22 actual and expected returns (including
23 any difference attributable to any
24 criminally fraudulent investment ar-
25 rangement).

1 “(II) CRIMINALLY FRAUDULENT
2 INVESTMENT ARRANGEMENTS.—The
3 determination as to whether an ar-
4 rangement is a criminally fraudulent
5 investment arrangement shall be made
6 under rules substantially similar to
7 the rules prescribed by the Secretary
8 for purposes of section 165.

9 “(B) EXPANDED SMOOTHING PERIOD.—

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

15 “(I) spreads the difference be-
16 tween expected and actual returns for
17 either or both of the first 2 plan years
18 ending after August 31, 2008, over a
19 period of not more than 10 years,

20 “(II) provides that for either or
21 both of the first 2 plan years begin-
22 ning after August 31, 2008, the value
23 of plan assets at any time shall not be
24 less than 80 percent or greater than

1 130 percent of the fair market value
2 of such assets at such time, or

3 “(III) makes both changes de-
4 scribed in subclauses (I) and (II) to
5 such method.

6 “(ii) ASSET VALUATION METHODS.—
7 If this subparagraph applies for any plan
8 year—

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

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

19 “(iii) AMORTIZATION OF REDUCTION
20 IN UNFUNDED ACCRUED LIABILITY.—If
21 this subparagraph and subparagraph (A)
22 both apply for any plan year, the plan shall
23 treat any reduction in unfunded accrued li-
24 ability resulting from the application of
25 this subparagraph as a separate experience

1 the application of this paragraph to
2 the plan, and

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

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

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

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

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

24 (b) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall take effect as of the first day of
3 the first plan year ending after August 31, 2008, ex-
4 cept that any election a plan makes pursuant to this
5 section that affects the plan’s funding standard ac-
6 count for the first plan year beginning after August
7 31, 2008, shall be disregarded for purposes of apply-
8 ing the provisions of section 305 of the Employee
9 Retirement Income Security Act of 1974 and section
10 432 of the Internal Revenue Code of 1986 to such
11 plan year.

12 (2) RESTRICTIONS ON BENEFIT INCREASES.—
13 Notwithstanding paragraph (1), the restrictions on
14 plan amendments increasing benefits in sections
15 304(b)(8)(D) of such Act and 431(b)(8)(D) of such
16 Code, as added by this section, shall take effect on
17 the date of enactment of this Act.

18 **TITLE III—BUDGETARY** 19 **PROVISIONS**

20 **SEC. 301. BUDGETARY PROVISIONS.**

21 The budgetary effects of this Act, for the purpose of
22 complying with the Statutory Pay-As-You-Go Act of 2010,
23 shall be determined by reference to the latest statement
24 titled ‘Budgetary Effects of PAYGO Legislation’ for this
25 Act, jointly submitted for printing in the Congressional

1 Record by the Chairmen of the House and Senate Budget
2 Committees, provided that such statement has been sub-
3 mitted prior to the vote on passage in the House acting
4 first on this conference report or amendment between the
5 Houses.

Amend the title so as to read: “An Act to provide a physician payment update, to provide pension funding relief, and for other purposes.”.