

**SA 3727. Mr. COBURN proposed an amendment to amendment SA 3721 proposed by Mr. BAUCUS to the bill H.R. 4851, to provide a temporary extension of certain programs, and for other purposes; as follows:**

At the end of the amendment, insert the following:

## TITLE II--OFFSETS FOR ACT

### Subtitle A--Revenue Offset Provisions

#### **SEC. 201. AMENDMENT OF 1986 CODE.**

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

#### **SEC. 202. INFORMATION REPORTING FOR RENTAL PROPERTY EXPENSE PAYMENTS.**

(a) *In General.*--Section 6041 is amended by adding at the end the following new subsection:

“(h) *Treatment of Rental Property Expense Payments.*--

“(1) **IN GENERAL.**--For purposes of subsection (a), a person receiving rental income from real estate (other than a qualified residence) shall be considered to be engaged in a trade or business of renting property.

“(2) **QUALIFIED RESIDENCE.**--For purposes of paragraph (1), the term ‘qualified residence’ means--

“(A) the principal residence (within the meaning of section 121) of the taxpayer, and

“(B) 1 other residence of the taxpayer which is selected by the taxpayer for purposes of this subsection for the taxable year and which is used by the taxpayer as a residence (within the meaning of section 280A(d)(1)).”.

(b) *Effective Date.*--The amendment made by this section shall apply to payments made after December 31, 2010.

### **SEC. 203. CRUDE TALL OIL INELIGIBLE FOR CELLULOSIC BIOFUEL PRODUCER CREDIT.**

(a) *In General.*--Section 40(B)(6)(E) is amended by adding at the end the following new clause:

“(iv) **EXCLUSION OF CERTAIN PROCESSED FUELS WITH A HIGH ACID CONTENT.**--The term ‘cellulosic biofuel’ shall not include any processed fuel with an acid number greater than 25. For purposes of the preceding sentence, the term ‘processed fuel’ means any fuel other than a fuel--

“(I) more than 4 percent of which (determined by weight) is any combination of water and sediment, or

“(II) the ash content of which is more than 1 percent (determined by weight).”.

(b) *Effective Date.*--The amendment made by this section shall apply to fuels sold or used on or after January 1, 2010.

### **SEC. 204. ELIMINATION OF ADVANCE REFUNDABILITY OF EARNED INCOME CREDIT.**

(a) *In General.*--Section 3507, subsection (g) of section 32, and paragraph (7) of section 6051(a) are repealed.

(b) *Conforming Amendments.*--

(1) Section 6012(a) is amended by striking paragraph (8) and by redesignating paragraph (9) as paragraph (8).

(2) Section 6302 is amended by striking subsection (i).

(c) *Effective Date.*--The repeals and amendments made by this section shall apply to taxable years beginning after December 31, 2010.

### **SEC. 205. UNEMPLOYMENT INSURANCE PROGRAM INTEGRITY.**

(a) *Reporting of First Day of Earnings to Directory of New Hires.*--

(1) **IN GENERAL.**--Section 453A(b)(1)(A) of the Social Security Act (42 U.S.C. 653a(b)(1)(A)) is amended by inserting ``the date services for remuneration were first performed by the employee," after ``of the employee,".

(2) **REPORTING FORMAT AND METHOD.**--Section 453A(c) of the Social Security Act (42 U.S.C. 653a(c)) is amended by inserting ``, to the extent practicable," after ``Each report required by subsection (b) shall" .

(3) **EFFECTIVE DATE.**--

(A) **IN GENERAL.**--Subject to subparagraph (B), the amendments made by this subsection shall take effect 6 months after the date of enactment of this Act.

(B) **COMPLIANCE TRANSITION PERIOD.**--If the Secretary of Health and Human Services determines that State legislation (other than legislation appropriating funds) is required in order for a State plan under part D of title IV of the Social Security Act to meet the additional requirements imposed by the amendment made by paragraph (1), the plan shall not be regarded as failing to meet such requirements before the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of such amendment. If the State has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

*(b) Extension and Modification of Collection of Past-Due Debt for Erroneous Payment of Unemployment Compensation.*--

(1) **PERMANENT EXTENSION.**--Subsection (f) of section 6402 is amended by striking paragraph (8).

(2) **COLLECTION IN ALL STATES.**--Subsection (f) of section 6402, as amended by paragraph (1), is amended by striking paragraph (3) and redesignating paragraphs (4) through (7) as paragraphs (3) through (6), respectively.

(3) **COLLECTION FOR REASONS OTHER THAN FRAUD.**--

(A) **IN GENERAL.**--Paragraph (4) of section 6402(f), as redesignated by paragraph (2), is amended by striking ``due to fraud" each place it appears.

(B) **CONFORMING AMENDMENTS.**--Section 6402(f) is amended--

(i) in paragraph (3), as redesignated by paragraph (2)--

(I) by striking "or due to fraud" in subparagraph (B), and

(II) by striking "and due to fraud" in subparagraph (C), and

(ii) in the heading, by striking "*Resulting From Fraud*".

(4) **EFFECTIVE DATE.**--The amendments made by this subsection shall apply to refunds payable on or after the date of the enactment of this Act.

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## **SEC. 206. PARTICIPANTS IN GOVERNMENT SECTION 457 PLANS ALLOWED TO TREAT ELECTIVE DEFERRALS AS ROTH CONTRIBUTIONS.**

(a) *In General.*--Section 402A(e)(1) (defining applicable retirement plan) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following:

"(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A)."

(b) *Elective Deferrals.*--Section 402A(e)(2) (defining elective deferral) is amended to read as follows:

"(2) **ELECTIVE DEFERRAL.**--The term 'elective deferral' means--

"(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

"(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A)."

(c) *Effective Date.*--The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

## **SEC. 207. INCREASE IN INFORMATION RETURN PENALTIES.**

(a) *Failure To File Correct Information Returns.*--

(1) **IN GENERAL.**--Subsections (a)(1), (b)(1)(A), and (b)(2)(A) of section 6721 are each amended by striking ``\$50" and inserting ``\$100".

(2) **AGGREGATE ANNUAL LIMITATION.**--Subsections (a)(1), (d)(1)(A), and (e)(3)(A) of section 6721 are each amended by striking ``\$250,000" and inserting ``\$1,500,000".

*(b) Reduction Where Correction Within 30 Days.--*

(1) **IN GENERAL.**--Subparagraph (A) of section 6721(b)(1) is amended by striking ``\$15" and inserting ``\$30".

(2) **AGGREGATE ANNUAL LIMITATION.**--Subsections (b)(1)(B) and (d)(1)(B) of section 6721 are each amended by striking ``\$75,000" and inserting ``\$250,000".

*(c) Reduction Where Correction on or Before August 1.--*

(1) **IN GENERAL.**--Subparagraph (A) of section 6721(b)(2) is amended by striking ``\$30" and inserting ``\$60".

(2) **AGGREGATE ANNUAL LIMITATION.**--Subsections (b)(2)(B) and (d)(1)(C) of section 6721 are each amended by striking ``\$150,000" and inserting ``\$500,000".

*(d) Aggregate Annual Limitations for Persons With Gross Receipts of Not More Than \$5,000,000.--*Paragraph (1) of section 6721(d) is amended--

(1) by striking ``\$100,000" in subparagraph (A) and inserting ``\$500,000",

(2) by striking ``\$25,000" in subparagraph (B) and inserting ``\$75,000", and

(3) by striking ``\$50,000" in subparagraph (C) and inserting ``\$200,000".

*(e) Penalty in Case of Intentional Disregard.--*Paragraph (2) of section 6721(e) is amended by striking ``\$100" and inserting ``\$250".

*(f) Adjustment for Inflation.--*Section 6721 is amended by adding at the end the following new subsection:

``(f) *Adjustment for Inflation.*--

“(1) **IN GENERAL.**--For each fifth calendar year beginning after 2012, each of the dollar amounts under subsections (a), (b), (d) (other than paragraph (2)(A) thereof), and (e) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting ‘calendar year 2011’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(2) **ROUNDING.**--If any amount adjusted under paragraph (1)--

“(A) is not less than \$75,000 and is not a multiple of \$500, such amount shall be rounded to the next lowest multiple of \$500, and

“(B) is not described in subparagraph (A) and is not a multiple of \$10, such amount shall be rounded to the next lowest multiple of \$10.”.

(g) *Effective Date.*--The amendments made by this section shall apply with respect to information returns required to be filed on or after January 1, 2011.

## **SEC. 208. ROLLOVERS FROM ELECTIVE DEFERRAL PLANS TO ROTH DESIGNATED ACCOUNTS.**

(a) *In General.*--Section 402A(c) is amended by adding at the end the following new paragraph:

“(4) **TAXABLE ROLLOVERS TO DESIGNATED ROTH ACCOUNTS.**--

“(A) **IN GENERAL.**--Notwithstanding sections 402(c), 403(b)(8), and 457(e)(16), in the case of any distribution to which this paragraph applies--

“(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

“(ii) section 72(t) shall not apply, and

“(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

“(B) **DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.**--In the case of an applicable retirement plan which includes a qualified Roth contribution program,

this paragraph shall apply to a distribution from such plan other than from a designated Roth account which is contributed in a qualified rollover contribution to the designated Roth account maintained under such plan for the benefit of the individual to whom the distribution is made.

“(C) **OTHER RULES.**--The rules of subparagraphs (D), (E), and (F) of section 408A(d)(3) (as in effect for taxable years beginning after 2009) shall apply for purposes of this paragraph.”.

(b) *Conforming Amendment.*--Section 402A(d)(3)(A) is amended by striking “A” and inserting “Except as provided in paragraph (4), a”.

(c) *Effective Date.*--The amendments made by this section shall apply to distributions in plan years beginning after December 31, 2009.

## Subtitle B--Pension Funding Relief

### **PART I--SINGLE EMPLOYER PLANS**

#### **SEC. 211. EXTENDED PERIOD FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS TO AMORTIZE CERTAIN SHORTFALL AMORTIZATION BASES.**

(a) *Amendments to ERISA.*--

(1) **IN GENERAL.**--Paragraph (2) of section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following subparagraph:

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

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

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

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

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

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

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

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

“(iv) **ELECTION.**--

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

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

“(III) **OTHER RULES.**--Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury. The Secretary of the Treasury shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the

treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

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

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

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

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

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

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**(2) INCREASES IN REQUIRED INSTALLMENTS IN CERTAIN CASES.**--Section 303(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1083(c)) is amended by adding at the end the following paragraph:

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

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

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

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

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

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

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

“(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

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

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

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

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

“(iii) **CARRYOVER OF EXCESS INSTALLMENT ACCELERATION AMOUNTS.**--

“(I) **IN GENERAL.**--If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii),

then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

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

**``(III) LIMITATION ON YEARS TO WHICH AMOUNTS CARRIED FOR.--**No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

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

**``(D) EXCESS EMPLOYEE COMPENSATION.--**For purposes of this paragraph--

**``(i) IN GENERAL.--**The term 'excess employee compensation' means, with respect to any employee for any plan year, the excess (if any) of--

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

**``(II)** \$1,000,000.

**``(ii) AMOUNTS SET ASIDE FOR NONQUALIFIED DEFERRED COMPENSATION.--**If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A of such Code) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as

remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

**``(iii) ONLY REMUNERATION FOR CERTAIN POST-2009 SERVICES COUNTED.--**Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

**``(iv) EXCEPTION FOR CERTAIN EQUITY PAYMENTS.--**

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

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

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

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

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

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

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

“(I) such dollar amount, multiplied by

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

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

“(E) **EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.**--

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

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

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

“(ii) **ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.**--For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) **EXCEPTION FOR INTRA-GROUP DIVIDENDS.**--Dividends paid by one member of a controlled group (as defined in section 302(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) **EXCEPTION FOR CERTAIN REDEMPTIONS.**--Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

**``(v) EXCEPTION FOR CERTAIN PREFERRED STOCK.--**

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

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**``(II) APPLICABLE PREFERRED STOCK.--**For purposes of subclause (I), the term `applicable preferred stock' means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of this title).

**``(F) OTHER DEFINITIONS AND RULES.--**For purposes of this paragraph--

**``(i) PLAN SPONSOR.--**The term `plan sponsor' includes any member of the plan sponsor's controlled group (as defined in section 302(d)(3)).

**``(ii) RESTRICTION PERIOD.--**The term `restriction period' means, with respect to any election year--

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

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

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

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

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

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

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

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

(b) *Amendments to Internal Revenue Code of 1986.*--

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

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

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

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

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

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

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

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

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

“(iv) **ELECTION.**--

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

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

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

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

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

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

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

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

**(2) INCREASES IN REQUIRED CONTRIBUTIONS IF EXCESS COMPENSATION PAID.**--Section 430(c) is amended by adding at the end the following paragraph:

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

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

“(B) **TOTAL INSTALLMENTS LIMITED TO SHORTFALL BASE.**--Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)--

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

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

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

``(i) **IN GENERAL.**--The term `installment acceleration amount' means, with respect to any plan year in a restriction period with respect to an election year, the sum of--

``(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

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

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

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

``(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

``(iii) **CARRYOVER OF EXCESS INSTALLMENT ACCELERATION AMOUNTS.**--

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

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

``(III) **LIMITATION ON YEARS TO WHICH AMOUNTS CARRIED FOR.**--No amount shall be carried under subclause (I) or (II) to a plan

year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

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

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

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

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

“(II) \$1,000,000.

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

“(iii) **ONLY REMUNERATION FOR CERTAIN POST-2009 SERVICES COUNTED.**--Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

“(iv) **EXCEPTION FOR CERTAIN EQUITY PAYMENTS.**--

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

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

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

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

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

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

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

**``(I)** such dollar amount, multiplied by

**``(II)** the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting `calendar year 2009' for `calendar year 1992' in subparagraph (B) thereof.

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

**``(E) EXTRAORDINARY DIVIDENDS AND REDEMPTIONS.--**

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

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

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

“(ii) **ONLY CERTAIN POST-2009 DIVIDENDS AND REDEMPTIONS COUNTED.**--For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

“(iii) **EXCEPTION FOR INTRA-GROUP DIVIDENDS.**--Dividends paid by one member of a controlled group (as defined in section 412(d)(3)) to another member of such group shall not be taken into account under clause (i).

“(iv) **EXCEPTION FOR CERTAIN REDEMPTIONS.**--Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

“(v) **EXCEPTION FOR CERTAIN PREFERRED STOCK.**--

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

“(II) **APPLICABLE PREFERRED STOCK.**--For purposes of subclause (I), the term `applicable preferred stock' means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of title I of Employee Retirement Income Security Act of 1974).

**“(F) OTHER DEFINITIONS AND RULES.**--For purposes of this paragraph--

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

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

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

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

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

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

**(3) CONFORMING AMENDMENTS.**--Section 430 is amended--

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

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

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

(c) *Effective Date.*--The amendments made by this section shall apply to plan years beginning after December 31, 2007.

**SEC. 212. APPLICATION OF EXTENDED AMORTIZATION PERIOD TO PLANS SUBJECT TO PRIOR LAW FUNDING RULES.**

(a) *In General.*--Title I of the Pension Protection Act of 2006 is amended by redesignating section 107 as section 108 and by inserting the following after section 106:

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

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

(b) *Application of 2 and 7 Rule.*--In the case of an election year to which this subsection applies--

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

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preceding the first election year of such plan.

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

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

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

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

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

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

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

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

“(d) *Election.*--

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

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

“(3) **OTHER RULES.**--Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

“(e) *Definitions.*--For purposes of this section--

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

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

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

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

(b) *Eligible Charity Plans.*--Section 104 of the Pension Protection Act of 2006 is amended--

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

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

“(d) *Eligible Charity Plan Defined.*--For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer (determined without regard to section 414(c) of the Internal Revenue Code) and 100 percent of the employers are described in section 501(c)(3) of such Code.”.

(c) *Effective Date.*--

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

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

## **SEC. 213. LOOKBACK FOR CERTAIN BENEFIT RESTRICTIONS.**

(a) *In General.*--

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

“(D) **SPECIAL RULE FOR CERTAIN YEARS.**--Solely for purposes of any applicable provision--

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

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

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

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

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

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

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

“(I) paragraph (3), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary of the Treasury, is a

payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

“(II) paragraph (4).”.

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

“(3) **SPECIAL RULE FOR CERTAIN YEARS.**--Solely for purposes of any applicable provision--

“(A) **IN GENERAL.**--For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of--

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

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

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

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

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

“(C) **APPLICABLE PROVISION.**--For purposes of this paragraph, the term ‘applicable provision’ means--

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

“(ii) subsection (e).”.

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

(c) *Effective Date.*--

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

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

#### **SEC. 214. LOOKBACK FOR CREDIT BALANCE RULE FOR PLANS MAINTAINED BY CHARITIES.**

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

##### **“(D) SPECIAL RULE FOR CERTAIN YEARS OF PLANS MAINTAINED BY CHARITIES.**--

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

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

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

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

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

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

“(iii) **LIMITATION TO CHARITIES.**--This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3) of the Internal Revenue Code of 1986.”.

(b) *Amendment to Internal Revenue Code of 1986.*--Paragraph (3) of section 430(f) of the Internal Revenue Code of 1986 is amended by adding the following at the end thereof:

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

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

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

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

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

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

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

“(iii) **LIMITATION TO CHARITIES.**--This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3).”.

(c) *Effective Date.*--

(1) **IN GENERAL.**--Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after August 31, 2009.

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

## **PART II--MULTIEMPLOYER PLANS**

### **SEC. 221. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT RULES.**

(a) *Adjustments.*--

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

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

“(A) **AMORTIZATION OF NET INVESTMENT LOSSES.**--

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

“(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

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

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

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

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

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

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

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

“(B) **EXPANDED SMOOTHING PERIOD.**--

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

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

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

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

“(ii) **ASSET VALUATION METHODS.**--If this subparagraph applies for any plan year--

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

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

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

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

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

**“(i) the plan actuary certifies that--**

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

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

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

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

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

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

**(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.**--Section 431(b) is amended by adding at the end the following new paragraph:

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

**“(A) AMORTIZATION OF NET INVESTMENT LOSSES.**--

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

**“(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and**

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

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

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

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

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

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

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

**“(B) EXPANDED SMOOTHING PERIOD.**--

“(i) **IN GENERAL.**--A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change

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its asset valuation method in a manner which--

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

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

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

“(ii) **ASSET VALUATION METHODS.**--If this subparagraph applies for any plan year--

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

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

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

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

“(D) **RESTRICTION ON BENEFIT INCREASES.**--If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may

not go into effect during either of the 2 plan years immediately following such plan year unless--

“(i) the plan actuary certifies that--

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

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

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

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

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

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

(b) *Effective Dates.*--

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

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

Subtitle C--Discretionary Spending

## **SEC. 231. PURPOSE.**

The purpose of this subtitle is to offset spending in this Act with discretionary spending.

## **SEC. 232. PAYMENTS TO DECEASED INDIVIDUALS AND ESTATES.**

(a) *In General.*--Notwithstanding any other provision of law, the Secretary of Agriculture shall not provide to any deceased individual or estate of such an individual any agricultural payment under Public Law 110-246, or any law amended by this law, after the date that is 1 program year (as determined by the Secretary with respect to the applicable payment program) after the date of death of the individual.

(b) *Report.*--As soon as practicable after the date of enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and post on the website of the Department of Agriculture, a report that describes, for the period covered by the report--

(1) the number and aggregate amount of agricultural payments described in subsection (a) provided to deceased individuals and estates of deceased individuals; and

(2) for each such payment, the length of time the estate of the deceased individual that received the payment has been open.

## **SEC. 233. RESCINDING 9-YEAR OLD UNUSED EARMARKS.**

(a) *Definition.*--In this section, the term "earmark" means the following:

(1) A congressionally directed spending item, as defined in Rule XLIV of the Standing Rules of the Senate.

(2) A congressional earmark, as defined for purposes of Rule XXI of the Rules of the House of Representatives.

(b) *Rescission.*--Any earmark of funds provided for any Federal agency with more than 90 percent of the appropriated amount remaining available for obligation at the end of the 9th fiscal year following the fiscal year in which the earmark was made available is rescinded effective at the end of that 9th fiscal year, except that the agency head may delay any such rescission if the agency head determines that an additional obligation of the earmark is likely to occur during the following 12-month period.

(c) *Identification and Report.*--

(1) **AGENCY IDENTIFICATION.**--Each Federal agency shall identify and report every project that is an earmark with an unobligated balance at the end of each fiscal year to the Director of OMB.

(2) **ANNUAL REPORT.**--The Director of OMB shall submit to Congress and publically post on the website of OMB an annual report that includes--

(A) a listing and accounting for earmarks with unobligated balances summarized by agency including the amount of the original earmark, amount of the unobligated balance, and the year when the funding expires, if applicable;

(B) the number of rescissions resulting from this section and the annual savings resulting from this section for the previous fiscal year; and

(C) a listing and accounting for earmarks provided for Federal agencies scheduled to be rescinded at the end of the current fiscal year.

**SEC. 234. OVER-THE-ROAD BUS SECURITY ASSISTANCE  
(PRESIDENTIAL TERMINATION).**

(a) *In General.*--Section 1532 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1182) is repealed.

(b) *Technical and Conforming Amendments.*--The Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53; 121 Stat. 266) is amended--

(1) in the table of contents in section 1(b), by striking the item relating to section 1532;

(2) by redesignating sections 1533 through 1542 as sections 1532 through 1541, respectively;

(3) in section 1531(e)(1)(E), by striking "section 1534" and inserting "section 1533"; and

(4) in section 1534(c)(4) (6 U.S.C. 1185(c)(4)), as so redesignated, by striking "and eligible recipients under section 1532".

(c) *Applicability.*--Notwithstanding the amendment made by subsection (a), any grant made under section 1532 of the Implementing Recommendations of the 9/11

Commission Act of 2007 (6 U.S.C. 1532) before the date of enactment of this Act shall remain in effect under the terms and for the duration of the grant.

**SEC. 235. RESOURCE CONSERVATION AND DEVELOPMENT  
(PRESIDENTIAL TERMINATION).**

Subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 et seq.) is repealed.

**SEC. 236. BROWNFIELDS REVITALIZATION FUNDING  
(PRESIDENTIAL TERMINATION).**

Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) is amended by striking subsection (k).

**SEC. 237. ENVIRONMENTAL INFRASTRUCTURE CONSTRUCTION  
PROJECTS (PRESIDENTIAL TERMINATION).**

The Water Resources Development Act of 2007 (Public Law 110-114) is amended by repealing the following sections:

- (1) Section 5039 (121 Stat. 1206).
- (2) Section 5061 (121 Stat. 1215).
- (3) Section 5065 (121 Stat. 1217).
- (4) Section 5082 (121 Stat. 1226).
- (5) Section 5085 (121 Stat. 1228).

**SEC. 238. CAPITAL GRANTS FOR RAIL LINE RELOCATION PROJECTS  
(PRESIDENTIAL TERMINATION).**

Section 20154 of title 49, United States Code, is repealed.

**SEC. 239. RESCISSIONS FROM THE DEPARTMENT OF COMMERCE  
(HOUSE PASSED).**

There are rescinded \$111,500,000 from the Department of Commerce under the heading ``*National Telecommunications and Information Administration*'', under the subheading ``**DIGITAL-TO-ANALOG CONVERTER BOX PROGRAM**'' to be derived from unobligated balances made available under this heading in title II of

division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 128).

**SEC. 240. RESCISSIONS FROM THE DEPARTMENT OF TRANSPORTATION (HOUSE PASSED).**

There are rescinded \$44,000,000 from the Department of Transportation under the heading ``*National Highway Traffic Safety Administration*`, under the subheading ``**CONSUMER ASSISTANCE TO RECYCLE AND SAVE PROGRAM**`` to be derived from unobligated balances made available in title XIII of Public Law 111-32 and in Public Law 111-47.

**SEC. 241. RESCISSIONS FROM THE FOOD AND NUTRITION SERVICE OF THE DEPARTMENT OF AGRICULTURE (HOUSE PASSED).**

There are rescinded \$361,825,000 from the Department of Agriculture under the heading ``*Food and Nutrition Service*`, under

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the subheading ``**SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)**`` to be derived from unobligated balances available from amounts placed in reserve in title I of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 115).

**SEC. 242. RESCISSION FROM THE RURAL DEVELOPMENT PROGRAM OF THE DEPARTMENT OF AGRICULTURE (HOUSE PASSED).**

There are rescinded \$102,675,000 from the Department of Agriculture under the heading ``*Rural Development Programs*`` to be derived from the unobligated balances of funds that were provided for such accounts in prior appropriation Acts (other than Public Law 111-5) and that were designated by the Congress in such Acts as an emergency requirement pursuant to a concurrent resolution on the budget or the Balanced Budget and Emergency Deficit Control Act of 1985.

**SEC. 243. DISPOSAL OF \$4 BILLION WORTH OF EXCESS, SURPLUS, UNDERPERFORMING, AND UNNEEDED FEDERAL PROPERTY.**

(a) *In General.*--The Director of the Office of Management and Budget, in consultation with the heads of executive agencies, before FY 2011, shall dispose of up to \$4,000,000,000 in real property that is--

(1) a parcel of real property under the administrative jurisdiction of the Federal Government that is--

(A) excess;

(B) surplus;

(C) underperforming; or

(D) otherwise not meeting the needs of the Federal Government, as determined by the Director; and

(2) a building or other structure located on real property described under paragraph (1).

(b) *Exclusion.*--The disposal of real property under this section excludes any parcel of real property or building or other structure located on such real property that is to be closed or realigned under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(c) *Reports.*--The Director shall provide an itemized report to Congress of the real property disposed of, including the savings and revenues resulting from such disposals and the reasons each property was chosen and how it was disposed.

**SEC. 244. ELIMINATION OF EXCESSIVE ADMINISTRATION AND WASTEFUL SPENDING, AND CONSOLIDATION OF DUPLICATIVE PROGRAMS, AT THE DEPARTMENT OF LABOR AND OTHER FEDERAL AGENCIES.**

(a) *In General.*--Notwithstanding any other provision of Federal law, the Secretary of Labor and the heads of other Federal agencies shall consolidate all job training and employment programs carried out through the Department of Labor or any of those Federal agencies. In carrying out the consolidated programs, the Secretary of Labor shall reduce the cost of administering such programs.

(b) *Definitions.*--In this section:

(1) **FEDERAL AGENCY.**--The term "Federal agency" includes the Department of Veterans Affairs, the Department of Education, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of Commerce, the Department of Homeland Security, and the Department of the Interior.

(2) **JOB TRAINING AND EMPLOYMENT PROGRAM.**--The term "job training and employment program" includes the programs carried out under subtitle B of title I, section 167, and section 173A, of the Workforce Investment Act of 1998 (42 U.S.C. 2811 et seq., 2912, and 2918a).

**SEC. 245. REPORT ON FUNDING FOR EXCESSIVE ADMINISTRATION, WASTEFUL PROJECTS, OR DUPLICATIVE PROJECTS AT THE DEPARTMENT OF LABOR AND OTHER FEDERAL AGENCIES.**

(a) *Purpose.*--The purpose of this section is to identify accounts from which funds could be rescinded, to assist in offset the costs of labor spending programs such as unemployment insurance programs with a specific focus on the Department of Labor.

(b) *Study.*--The Secretary of Labor and the head of every other Federal agency shall conduct a study in which the head of the agency identifies--

(1) each account of the agency that the head estimates will have unobligated funds at the end of the program year ending after the date of enactment of this Act, and the amount of the unobligated funds estimated for each such account; and

(2) each account of the agency that the head determines is overfunded (due to funding for excessive administration, wasteful projects, or duplicative projects), and the amount of the overfunding for each such account.

(c) *Report.*--Not later than 30 days after the date of enactment of this Act, the head of each Federal agency shall submit to Congress a report containing the results of the study, and make the report publicly available on the Web site of the agency.