

**SEC. 1106. REVOCATION OF ELECTION RELATING TO  
TREATMENT AS MULTIEMPLOYER PLAN.**

(a) AMENDMENT TO ERISA.—Section 3(37) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subparagraph (G):

“(G)(i) Within 1 year after the enactment of the Pension Protection Act of 2006—

“(I) an election under subparagraph (E) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under subparagraph (E), and

“(II) a plan that meets the criteria in clauses (i) and (ii) of subparagraph (A) of this paragraph or that is described in clause (vi) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

“(aa) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan,<sup>1</sup> ~~before the date of the enactment of the Pension Protection Act of 2006,~~ the plan has met those criteria or is so described,

“(bb) substantially all of the plan’s employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501 of the Internal Revenue Code of 1986, and

“(cc) the plan was established prior to September 2, 1974.

“(ii) An election under this paragraph shall be effective for all purposes under this Act and under the Internal Revenue Code of 1986, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under clause (i)(II) ~~the first plan year ending after the date of the enactment of the Pension Protection Act of 2006.~~

“(iii) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subclause (i)(II) shall cease to be a

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<sup>1</sup> Changes made by PL 110-28, Section 6611, signed into law on May 27, 2007. Additions are in blue and deletions are in red. PL 110-28 states that the changes made by Section 6611 shall take effect as if included in Section 1106 of the Pension Protection Act of 2006.

multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501 of the Internal Revenue Code of 1986.

“(iv) The fact that a plan makes an election under clause (i)(II) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

“(v)(I) No later than 30 days before an election is made under this paragraph, the plan administrator shall provide notice of the pending election to each plan participant and beneficiary, each labor organization representing such participants or beneficiaries, and each employer that has an obligation to contribute to the plan, describing the principal differences between the guarantee programs under title IV and the benefit restrictions under this title for single employer and multiemployer plans, along with such other information as the plan administrator chooses to include.

“(II) Within 180 days after the date of enactment of the Pension Protection Act of 2006, the Secretary shall prescribe a model notice under this subparagraph.

“(III) A plan administrator’s failure to provide the notice required under this subparagraph shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

“(vi) A plan is described in this clause if it is a plan sponsored by an organization which is described in section 501(c)(5) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which was established in Chicago, Illinois, on August 12, 1881. ~~if it is a plan—~~

~~“(I) that was established in Chicago, Illinois, on August 12, 1881; and~~

~~“(II) sponsored by an organization described in section 501(c)(5) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.”.~~

“(vii) For purposes of this Act and the Internal Revenue Code of 1986, a plan making an election under this subparagraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits

employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement."

(b) AMENDMENT TO INTERNAL REVENUE CODE.— Subsection (f) of section 414 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph (6):

“(6) ELECTION WITH REGARD TO MULTIEMPLOYER STATUS.—

“(A) Within 1 year after the enactment of the Pension Protection Act of 2006—

“(i) An election under paragraph (5) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under paragraph (5), and

“(ii) a plan that meets the criteria in subparagraph (A) and (B) of paragraph (1) of this subsection or that is described in subparagraph (E) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

“(I) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, before the date of enactment of the Pension Protection Act of 2006, the plan has met those criteria or is so described,

“(II) substantially all of the plan’s employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501, and

“(III) the plan was established prior to September 2, 1974.

“(B) An election under this paragraph shall be effective for all purposes under this Act and under the Employee Retirement Income Security Act of 1974, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii). the first plan year ending after the date of the enactment of the Pension Protection Act of 2006.

“(C) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subparagraph (A)(ii) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501.

“(D) The fact that a plan makes an election under subparagraph (A)(ii) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

“(E) A plan is described in this subparagraph if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881. ~~if it is a plan—~~

~~“(i) that was established in Chicago, Illinois, on August 12, 1881; and~~

~~“(ii) sponsored by an organization described in section 501(c)(5) and exempt from tax under section 501(a).”.~~

“(F) Maintenance under collective bargaining agreement - For purposes of this title and the Employee Retirement Income Security Act of 1974, a plan making an election under this paragraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.