

AMENDMENT NO. _____

Calendar No. _____

Purpose: Substitute amendment to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to temporarily change the determination of the interest rate used for funding and other purposes from use of the 30-year treasury bond rate to a composite corporate bond rate, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 1st Sess.

H.R. 3108

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, 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 intended to be proposed by

Viz:

- 1 Strike all after the enacting clause, and insert:
- 2 **SECTION 1. SHORT TITLE.**
- 3 This Act may be cited as the “Pension Stability Act”.

1 **SEC. 2. TEMPORARY REPLACEMENT OF INTEREST RATE ON**
2 **30-YEAR TREASURY SECURITIES WITH INTER-**
3 **EST RATE ON CONSERVATIVELY INVESTED**
4 **LONG-TERM CORPORATE BONDS.**

5 (a) INTERNAL REVENUE CODE OF 1986.—

6 (1) DETERMINATION OF PERMISSIBLE
7 RANGE.—

8 (A) IN GENERAL.—Section
9 412(b)(5)(B)(ii) of the Internal Revenue Code
10 of 1986 is amended—

11 (i) in subclause (I), by inserting “or
12 (III)” after “subclause (II)”;

13 (ii) by redesignating subclause (II) as
14 subclause (III);

15 (iii) by inserting after subclause (I)
16 the following new subclause:

17 “(II) SPECIAL RULE FOR 2004
18 AND 2005.—In the case of plan years
19 beginning in 2004 or 2005, the term
20 ‘permissible range’ means a rate of in-
21 terest which is not above, and not
22 more than 10 percent below, the
23 weighted average of the conservative
24 long-term corporate bond rates during
25 the 4-year period ending on the last
26 day before the beginning of the plan

1 year. The Secretary shall, by regula-
2 tion, prescribe a method for periodi-
3 cally determining conservative long-
4 term bond rates for purposes of this
5 paragraph. Such rates shall reflect the
6 rates of interest on amounts invested
7 conservatively in long-term corporate
8 bonds and shall be based on the use
9 of 2 or more indices that are in the
10 top 2 quality levels available reflecting
11 average maturities of 20 years or
12 more.”; and

13 (iv) in subclause (III), as so
14 redesignated—

15 (I) by inserting “or (II)” after
16 “subclause (I)” the first place it ap-
17 pears; and

18 (II) by striking “subclause (I)”
19 the second place it appears and insert-
20 ing “such subclause”.

21 (2) DETERMINATION OF CURRENT LIABILITY.—
22 Section 412(l)(7)(C)(i) of such Code is amended by
23 adding at the end the following new subclause:

24 “(IV) SPECIAL RULE FOR 2004
25 AND 2005.—For plan years beginning

1 in 2004 or 2005, notwithstanding
2 subclause (I), the rate of interest used
3 to determine current liability under
4 this subsection shall be the rate of in-
5 terest under subsection (b)(5).”.

6 (3) CONFORMING AMENDMENT.—Section
7 412(m)(7) of such Code is amended to read as fol-
8 lows:

9 “(7) SPECIAL RULE FOR 2002.—In any case in
10 which the interest rate used to determine current li-
11 ability is determined under subsection
12 (l)(7)(C)(i)(III), for purposes of applying paragraphs
13 (1) and (4)(B)(ii) for plan years beginning in 2002,
14 the current liability of the plan for the preceding
15 plan year shall be redetermined using 120 percent as
16 the specified percentage determined under sub-
17 section (l)(7)(C)(i)(II).”.

18 (4) LIMITATION ON CERTAIN ASSUMPTIONS.—
19 Section 415(b)(2)(E)(ii) of such Code is amended by
20 inserting “, except that in the case of plan years be-
21 ginning in 2004 or 2005, ‘5.5 percent’ shall be sub-
22 stituted for ‘5 percent’ in clause (i)” before the pe-
23 riod at the end.

24 (5) ELECTION TO DISREGARD MODIFICATION
25 FOR DEDUCTION PURPOSES.—Section 404(a)(1) of

1 such Code is amended by adding at the end the fol-
2 lowing new subparagraph:

3 “(F) ELECTION TO DISREGARD MODIFIED
4 INTEREST RATE.—An employer may elect to
5 disregard subsections (b)(5)(B)(ii)(II) and
6 (l)(7)(C)(i) of section 412 solely for purposes of
7 determining the interest rate used in calculating
8 the maximum amount of the deduction allow-
9 able under this section for contributions to a
10 plan to which such subsections apply.”

11 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
12 OF 1974.—

13 (1) DETERMINATION OF PERMISSIBLE
14 RANGE.—

15 (A) IN GENERAL.—Section
16 302(b)(5)(B)(ii) of the Employee Retirement
17 Income Security Act of 1974 (29 U.S.C.
18 1082(b)(5)(B)(ii)) is amended—

19 (i) in subclause (I), by inserting “or
20 (III)” after “subclause (II)”;

21 (ii) by redesignating subclause (II) as
22 subclause (III);

23 (iii) by inserting after subclause (I)
24 the following new subclause:

1 “(II) SPECIAL RULE FOR YEARS 2004
2 AND 2005.—In the case of plan years be-
3 ginning in 2004 or 2005, the term ‘permiss-
4 sible range’ means a rate of interest which
5 is not above, and not more than 10 percent
6 below, the weighted average of the conserv-
7 ative long-term corporate bond rates (as
8 determined under section
9 412(b)(5)(B)(ii)(II) of the Internal Rev-
10 enue Code of 1986) during the 4-year pe-
11 riod ending on the last day before the be-
12 ginning of the plan year.”; and

13 (iv) in subclause (III), as so
14 redesignated—

15 (I) by inserting “or (II)” after
16 “subclause (I)” the first place it ap-
17 pears; and

18 (II) by striking “subclause (I)”
19 the second place it appears and insert-
20 ing “such subclause”.

21 (2) DETERMINATION OF CURRENT LIABILITY.—
22 Section 302(d)(7)(C)(i) of such Act (29 U.S.C.
23 1082(d)(7)(C)(i)) is amended by adding at the end
24 the following new subclause:

1 “(IV) SPECIAL RULE FOR 2004
2 AND 2005.—For plan years beginning
3 in 2004 or 2005, notwithstanding
4 subclause (I), the rate of interest used
5 to determine current liability under
6 this subsection shall be the rate of in-
7 terest under subsection (b)(5).”.

8 (3) CONFORMING AMENDMENT.—Section
9 302(e)(7) of such Act (29 U.S.C. 1082(e)(7)) is
10 amended to read as follows:

11 “(7) SPECIAL RULE FOR 2002.—In any case in
12 which the interest rate used to determine current li-
13 ability is determined under subsection
14 (d)(7)(C)(i)(III), for purposes of applying para-
15 graphs (1) and (4)(B)(ii) for plan years beginning in
16 2002, the current liability of the plan for the pre-
17 ceding plan year shall be redetermined using 120 as
18 the specified percentage determined under sub-
19 section (d)(7)(C)(i)(II).”.

20 (4) PBGC.—Section 4006(a)(3)(E)(iii) of such
21 Act (29 U.S.C. 1306(a)(3)(E)(iii)) is amended by
22 adding at the end the following new subclause:

23 “(V) In the case of plan years beginning in
24 2004 or 2005, the annual yield taken into account
25 under subclause (II) shall be the annual yield com-

1 puted by using the conservative long-term corporate
2 bond rate (as determined under section
3 412(b)(5)(B)(ii)(II) of the Internal Revenue Code of
4 1986) for the month preceding the month in which
5 the plan year begins.”

6 (c) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the amendments made by this section
9 shall apply to plan years beginning after December
10 31, 2003.

11 (2) LOOKBACK RULES.—For purposes of apply-
12 ing subsections (l)(9)(B)(ii) and (m)(1) of section
13 412 of the Internal Revenue Code of 1986, and sub-
14 sections (d)(9)(B)(ii) and (e)(1) of section 302 of
15 the Employee Retirement Income Security Act of
16 1974 to plan years beginning after December 31,
17 2003, the amendments made by this section may be
18 applied as if such amendments had been in effect for
19 all years beginning before such date.

20 (3) TRANSITION RULE FOR SECTION 415 LIMI-
21 TATION.—In the case of any participant or bene-
22 ficiary receiving a distribution after December 31,
23 2003 and before January 1, 2005, the amount pay-
24 able under any form of benefit subject to section
25 417(b)(3) of the Internal Revenue Code of 1986 and

1 subject to adjustment under section 415(b)(2)(B) of
2 such Code shall not, solely by reason of the amend-
3 ment made by subsection (a)(4), be less than the
4 amount that would have been so payable had the
5 amount payable been determined using the applica-
6 ble interest rate in effect as of the last day of the
7 last plan year beginning before January 1, 2004.

8 **SEC. 3. ELECTION OF ALTERNATIVE DEFICIT REDUCTION**
9 **CONTRIBUTION.**

10 (a) AMENDMENT OF 1986 CODE.—Section 412(l) of
11 the Internal Revenue Code of 1986 (relating to applica-
12 bility of subsection) is amended by adding at the end the
13 following new paragraph:

14 “(12) ALTERNATIVE INCREASE FOR CERTAIN
15 PLANS MEETING REQUIREMENTS IN 2000.—

16 “(A) IN GENERAL.—In the case of a de-
17 fined benefit plan established and maintained
18 by an applicable employer, if this subsection did
19 not apply to the plan for the plan year begin-
20 ning in 2000 (determined without regard to
21 paragraph (6)), then, at the election of the em-
22 ployer, the increased amount under paragraph
23 (1) for any applicable plan year shall be the
24 greater of—

1 “(i) 20 percent (40 percent in the
2 case of an applicable plan year beginning
3 after December 27, 2004) of the increased
4 amount under paragraph (1) determined
5 without regard to this paragraph, or

6 “(ii) the increased amount which
7 would be determined under paragraph (1)
8 if the deficit reduction contribution under
9 paragraph (2) for the applicable plan year
10 were determined without regard to sub-
11 paragraphs (A), (B), and (D) of paragraph
12 (2).

13 “(B) RESTRICTIONS ON BENEFIT IN-
14 CREASES.—No amendment which increases the
15 liabilities of the plan by reason of any increase
16 in benefits, any change in the accrual of bene-
17 fits, or any change in the rate at which benefits
18 become nonforfeitable shall be adopted during
19 any applicable plan year, unless—

20 “(i) the funded current liability per-
21 centage (as defined in paragraph (8)(B))
22 as of the end of such plan year is projected
23 (taking into account the effect of the
24 amendment) to be at least 75 percent,

1 “(ii) the amendment provides for an
2 increase in benefits under a formula which
3 is not based on a participant’s compensa-
4 tion, but only if the rate of such increase
5 is not in excess of the contemporaneous
6 rate of increase in average wages of par-
7 ticipants covered by the amendment,

8 “(iii) the amendment is required by a
9 collective bargaining agreement which is in
10 effect on the date of enactment of this sub-
11 paragraph, or

12 “(iv) the amendment is otherwise de-
13 scribed in subparagraph (A) or (C) of sub-
14 section (f)(2).

15 If a plan is amended during any applicable plan
16 year in violation of the preceding sentence, any
17 election under this paragraph shall not apply to
18 any applicable plan year ending on or after the
19 date on which such amendment is adopted.

20 “(C) APPLICABLE EMPLOYER.—For pur-
21 poses of this paragraph—

22 “(i) IN GENERAL.—The term ‘applica-
23 ble employer’ means an employer which
24 is—

1 “(I) a commercial passenger air-
2 line,

3 “(II) primarily engaged in the
4 production or manufacture of a steel
5 mill product, or

6 “(III) an organization described
7 in section 501(c)(5) and which estab-
8 lished the plan to which this para-
9 graph applies on June 30, 1955.

10 “(ii) OTHER EMPLOYERS MAY APPLY
11 FOR RELIEF.—

12 “(I) IN GENERAL.—Except as
13 provided in subclause (II), an em-
14 ployer other than an employer de-
15 scribed in clause (i) shall be treated
16 as an applicable employer if the em-
17 ployer files an application (at such
18 time and in such manner as the Sec-
19 retary may prescribe) to be treated as
20 an applicable employer for purposes of
21 this paragraph.

22 “(II) EXCEPTION.—Subclause (I)
23 shall not apply to an employer if,
24 within 90 days of the filing of the ap-
25 plication, the Secretary determines

1 (taking into account the application of
2 this paragraph) that there is a reason-
3 able likelihood that the employer will
4 be unable to make future required
5 contributions to the plan in a timely
6 manner.

7 “(D) APPLICABLE PLAN YEAR.—For pur-
8 poses of this paragraph—

9 “(i) IN GENERAL.—The term ‘applica-
10 ble plan year’ means any plan year begin-
11 ning after December 27, 2003, and before
12 December 28, 2005, for which the em-
13 ployer elects the application of this para-
14 graph.

15 “(ii) LIMITATION ON NUMBER OF
16 YEARS WHICH MAY BE ELECTED.—An elec-
17 tion may not be made under this para-
18 graph with respect to more than 2 plan
19 years.

20 “(E) ELECTION.—An election under this
21 paragraph shall be made at such time and in
22 such manner as the Secretary may prescribe.”

23 (b) AMENDMENT OF ERISA.—Section 302(d) of the
24 Employee Retirement Income Security Act of 1974 (29

1 U.S.C. 1082(d)) is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(12) ALTERNATIVE INCREASE FOR CERTAIN
4 PLANS MEETING REQUIREMENTS IN 2000.—

5 “(A) IN GENERAL.—In the case of a de-
6 fined benefit plan established and maintained
7 by an applicable employer, if this subsection did
8 not apply to the plan for the plan year begin-
9 ning in 2000 (determined without regard to
10 paragraph (6)), then, at the election of the em-
11 ployer, the increased amount under paragraph
12 (1) for any applicable plan year shall be the
13 greater of—

14 “(i) 20 percent (40 percent in the
15 case of an applicable plan year beginning
16 after December 27, 2004) of the increased
17 amount under paragraph (1) determined
18 without regard to this paragraph, or

19 “(ii) the increased amount which
20 would be determined under paragraph (1)
21 if the deficit reduction contribution under
22 paragraph (2) for the applicable plan year
23 were determined without regard to sub-
24 paragraphs (A), (B), and (D) of paragraph
25 (2).

1 “(B) RESTRICTIONS ON BENEFIT IN-
2 CREASES.—No amendment which increases the
3 liabilities of the plan by reason of any increase
4 in benefits, any change in the accrual of bene-
5 fits, or any change in the rate at which benefits
6 become nonforfeitable under the plan shall be
7 adopted during any applicable plan year,
8 unless—

9 “(i) the funded current liability per-
10 centage (as defined in paragraph (8)(B))
11 as of the end of such plan year is projected
12 (taking into account the effect of the
13 amendment) to be at least 75 percent,

14 “(ii) the amendment provides for an
15 increase in benefits under a formula which
16 is not based on a participant’s compensa-
17 tion, but only if the rate of such increase
18 is not in excess of the contemporaneous
19 rate of increase in average wages of par-
20 ticipants covered by the amendment,

21 “(iii) the amendment is required by a
22 collective bargaining agreement which is in
23 effect on the date of enactment of this sub-
24 paragraph, or

1 “(iv) the amendment is otherwise de-
2 scribed in subparagraph (A) or (C) of sec-
3 tion 304(b)(2).

4 If a plan is amended during any applicable plan
5 year in violation of the preceding sentence, any
6 election under this paragraph shall not apply to
7 any applicable plan year ending on or after the
8 date on which such amendment is adopted.

9 “(C) APPLICABLE EMPLOYER.—For pur-
10 poses of this paragraph—

11 “(i) IN GENERAL.—The term ‘applica-
12 ble employer’ means an employer which
13 is—

14 “(I) a commercial passenger air-
15 line,

16 “(II) primarily engaged in the
17 production or manufacture of a steel
18 mill product, or

19 “(III) an organization described
20 in section 501(c)(5) of the Internal
21 Revenue Code of 1986 and which es-
22 tablished the plan to which this para-
23 graph applies on June 30, 1955.

24 “(ii) OTHER EMPLOYERS MAY APPLY
25 FOR RELIEF.—

1 “(I) IN GENERAL.—Except as
2 provided in subclause (II), an em-
3 ployer other than an employer de-
4 scribed in clause (i) shall be treated
5 as an applicable employer if the em-
6 ployer files an application (at such
7 time and in such manner as the Sec-
8 retary of the Treasury may prescribe)
9 to be treated as an applicable em-
10 ployer for purposes of this paragraph.

11 “(II) EXCEPTION.—Subclause (I)
12 shall not apply to an employer if,
13 within 90 days of the filing of the ap-
14 plication, the Secretary of the Treas-
15 ury determines (taking into account
16 the application of this paragraph) that
17 there is a reasonable likelihood that
18 the employer will be unable to make
19 future required contributions to the
20 plan in a timely manner.

21 “(D) APPLICABLE PLAN YEAR.—For pur-
22 poses of this paragraph—

23 “(i) IN GENERAL.—The term ‘applica-
24 ble plan year’ means any plan year begin-
25 ning after December 27, 2003, and before

1 December 28, 2005, for which the em-
2 ployer elects the application of this para-
3 graph.

4 “(ii) LIMITATION ON NUMBER OF
5 YEARS WHICH MAY BE ELECTED.—An elec-
6 tion may not be made under this para-
7 graph with respect to more than 2 plan
8 years.

9 “(E) NOTICE REQUIREMENTS FOR PLANS
10 ELECTING ALTERNATIVE DEFICIT REDUCTION
11 CONTRIBUTIONS.—

12 “(i) IN GENERAL.—If an employer
13 elects an alternative deficit reduction con-
14 tribution under this paragraph and section
15 412(l)(12) of the Internal Revenue Code of
16 1986 for any year, the employer shall pro-
17 vide, within 30 days (120 days in the case
18 of an employer described in subparagraph
19 (C)(ii)) of filing the election for such year,
20 written notice of the election to partici-
21 pants and beneficiaries and to the Pension
22 Benefit Guaranty Corporation.

23 “(ii) NOTICE TO PARTICIPANTS AND
24 BENEFICIARIES.—The notice under clause

1 (i) to participants and beneficiaries shall
2 include with respect to any election—

3 “(I) the due date of the alter-
4 native deficit reduction contribution
5 and the amount by which such con-
6 tribution was reduced from the
7 amount which would have been owed
8 if the election were not made, and

9 “(II) a description of the benefits
10 under the plan which are eligible to be
11 guaranteed by the Pension Benefit
12 Guaranty Corporation and an expla-
13 nation of the limitations on the guar-
14 antee and the circumstances under
15 which such limitations apply, includ-
16 ing the maximum guaranteed monthly
17 benefits which the Pension Benefit
18 Guaranty Corporation would pay if
19 the plan terminated while under-
20 funded.

21 “(iii) NOTICE TO PBGC.—The notice
22 under clause (i) to the Pension Benefit
23 Guaranty Corporation shall include—

24 “(I) the information described in
25 clause (ii)(I),

1 “(II) the number of years it will
2 take to restore the plan to full fund-
3 ing if the employer only makes the re-
4 quired contributions, and

5 “(III) information as to how the
6 amount by which the plan is under-
7 funded compares with the capitaliza-
8 tion of the employer making the elec-
9 tion.

10 “(F) ELECTION.—An election under this
11 paragraph shall be made at such time and in
12 such manner as the Secretary of the Treasury
13 may prescribe.”

14 (c) EFFECT OF ELECTION.—An election under sec-
15 tion 412(l)(12) of the Internal Revenue Code of 1986 or
16 section 302(d)(12) of the Employee Retirement Income
17 Security Act of 1974 (as added by this section) with re-
18 spect to a plan shall not invalidate any obligation (pursu-
19 ant to a collective bargaining agreement in effect on the
20 date of the election) to provide benefits, to change the ac-
21 tual of benefits, or to change the rate at which benefits
22 become nonforfeitable under the plan .

23 (d) PENALTY FOR FAILING TO PROVIDE NOTICE.—
24 Section 502(c)(3) of the Employee Retirement Income Se-
25 curity Act of 1974 (29 U.S.C. 1132(c)(3)) is amended by

1 inserting “or who fails to meet the requirements of section
2 302(d)(12)(E) with respect to any participant or bene-
3 ficiary” after “101(e)(2)”.

4 **SEC. 4. MULTIEMPLOYER PLAN FUNDING NOTICES.**

5 (a) IN GENERAL.—Section 104 of the Employee Re-
6 tirement Income Security Act of 1974 (29 U.S.C. 104)
7 is amended by redesignating subsection (d) as subsection
8 (e) and by inserting after subsection (c) the following new
9 subsection:

10 “(d) MULTIEMPLOYER DEFINED BENEFIT PLAN
11 FUNDING NOTICES.—

12 “(1) IN GENERAL.—The administrator of a de-
13 fined benefit plan which is a multiemployer plan
14 shall for each plan year provide a plan funding no-
15 tice to each plan participant and beneficiary, to each
16 labor organization representing such participants or
17 beneficiaries, and to each employer that has an obli-
18 gation to contribute under the plan.

19 “(2) INFORMATION CONTAINED IN NOTICES.—

20 “(A) IDENTIFYING INFORMATION.—Each
21 notice required under paragraph (1) shall con-
22 tain identifying information, including the name
23 of the plan, the address and phone number of
24 the plan administrator and the plan’s principal
25 administrative officer, each plan sponsor’s em-

1 employer identification number, and the plan num-
2 ber of the plan.

3 “(B) SPECIFIC INFORMATION.—A plan
4 funding notice under paragraph (1) shall
5 include—

6 “(i) a statement as to whether the
7 plan’s funded current liability percentage
8 (as defined in section 302(d)(8)(B)) for
9 the plan year to which the notice relates is
10 at least 100 percent (and, if not, the actual
11 percentage);

12 “(ii) a statement of the value of the
13 plan’s assets, the amount of benefit pay-
14 ments, and the ratio of the assets to the
15 payments for the plan year to which the
16 report relates;

17 “(iii) a summary of the rules gov-
18 erning insolvent multiemployer plans, in-
19 cluding the limitations on benefit payments
20 and any potential benefit reductions and
21 suspensions (and the potential effects of
22 such limitations, reductions, and suspen-
23 sions on the plan); and

24 “(iv) a general description of the ben-
25 efits under the plan which are eligible to be

1 guaranteed by the Pension Benefit Guar-
2 anty Corporation, along with an expla-
3 nation of the limitations on the guarantee
4 and the circumstances under which such
5 limitations apply.

6 “(C) OTHER INFORMATION.—Each notice
7 under paragraph (1) shall include any addi-
8 tional information which the plan administrator
9 elects to include to the extent not inconsistent
10 with regulations prescribed by the Secretary.

11 “(3) TIME FOR PROVIDING NOTICE.—Any no-
12 tice under paragraph (1) shall be provided no later
13 than two months after the deadline (including exten-
14 sions) for filing the annual report for the plan year
15 to which the notice relates.

16 “(4) FORM AND MANNER.—Any notice under
17 paragraph (1)—

18 “(A) shall be provided in a form and man-
19 ner prescribed in regulations of the Secretary,

20 “(B) shall be written in a manner so as to
21 be understood by the average plan participant,
22 and

23 “(C) may be provided in written, elec-
24 tronic, or other appropriate form to the extent

1 such form is reasonably accessible to persons to
2 whom the notice is required to be provided.”

3 (b) PENALTIES.—Section 502(c)(1) of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1132(c)(1)) is amended by striking “or section 101(e)(1)”
6 and inserting “, section 101(e)(1), or section 104(d)”.

7 (c) REGULATIONS AND MODEL NOTICE.—The Sec-
8 retary of Labor shall, not later than 1 year after the date
9 of the enactment of this Act, issue regulations (including
10 a model notice) necessary to implement the amendments
11 made by this section.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to plan years beginning after De-
14 cember 31, 2004.

15 **SEC. 5. AMORTIZATION HIATUS FOR NET EXPERIENCE**
16 **LOSSES IN MULTIEMPLOYER PLANS.**

17 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
18 INCOME SECURITY ACT OF 1974.—

19 (1) IN GENERAL.—Section 302(b)(7) of the
20 Employee Retirement Income Security Act of 1974
21 (29 U.S.C.1082(b)(7)) is amended by adding at the
22 end the following new subparagraph:

23 “(F)(i) If a multiemployer plan has a net expe-
24 rience loss for any plan year beginning after June
25 30, 2002, and before July 1, 2006—

1 “(I) the plan may elect to have the 15-year
2 amortization period under paragraph (2)(B)(iv)
3 with respect to the loss begin in any plan year
4 selected by the plan from among the 3 imme-
5 diately succeeding plan years, and

6 “(II) if the plan makes an election under
7 subclause (I) for any plan year, the net experi-
8 ence loss for the year shall, for purposes of de-
9 termining any charge to the funding standard
10 account, or interest, with respect to the loss, be
11 treated in the same manner as if it were a net
12 experience loss occurring in the year selected by
13 the plan under subclause (I) (without regard to
14 any net experience loss or gain otherwise deter-
15 mined for such year).

16 Notwithstanding the preceding sentence, a plan may
17 elect to have this subparagraph apply to net experi-
18 ence losses for only 2 plan years beginning after
19 June 30, 2002, and before July 1, 2006.

20 “(ii) An amendment which increases the liabil-
21 ities of the plan by reason of any increase in bene-
22 fits, any change in the accrual of benefits, or any
23 change in the rate at which benefits become non-
24 forfeitable under the plan shall not take effect for
25 any plan year in the hiatus period, unless—

1 “(I) the funded current liability percentage
2 (as defined in subsection (d)(8)(B)) as of the
3 end of the plan year is projected (taking into
4 account the effect of the amendment) to be at
5 least 75 percent,

6 “(II) the plan’s actuary certifies that, due
7 to an increase in contribution rates, the normal
8 cost attributable to the benefit increase or other
9 change is expected to be fully funded in the
10 year following the year the increase or other
11 change takes effect, and any increase in the
12 plan’s accrued liabilities attributable to the ben-
13 efit increase or other change is expected to be
14 fully funded by the end of the third plan year
15 following the end of the last hiatus period of
16 the plan, or

17 “(III) the plan amendment is otherwise de-
18 scribed in subparagraph (A) or (C) of section
19 304(b)(2).

20 “(iii) Clause (ii) shall not apply to an increase
21 in benefits for a group of participants resulting sole-
22 ly from a collectively bargained increase in the con-
23 tributions made on their behalf.

24 “(iv) For purposes of this subparagraph, the
25 term ‘hiatus period’ means any period during which

1 the amortization of a net experience loss is sus-
2 pended by reason of this subparagraph.

3 “(v) Interest accrued on any net experience loss
4 during a hiatus period shall be charged to a rec-
5 onciliation account and not to the funding standard
6 account.

7 “(vi) If a plan elects an amortization hiatus
8 under this subparagraph and section 412(b)(7)(F)
9 of the Internal Revenue Code of 1986 for any plan
10 year, the plan administrator shall provide, within 30
11 days of filing the election for such year, written no-
12 tice of the election to participants and beneficiaries,
13 to each labor organization representing such partici-
14 pants or beneficiaries, and to each employer that has
15 an obligation to contribute under the plan. Such no-
16 tice shall include with respect to any election the
17 amount of the net experience loss to be deferred and
18 the period of the deferral. Such notice shall also in-
19 clude the maximum guaranteed monthly benefits
20 which the Pension Benefit Guaranty Corporation
21 would pay if the plan terminated while underfunded.

22 “(vii) An election under this subparagraph shall
23 be made at such time and in such manner as the
24 Secretary, after consultation with the Secretary of
25 the Treasury, may prescribe.”

1 (2) PENALTY.—Section 502(c)(4) of such Act
2 (29 U.S.C. 1132(c)(4)) is amended to read as fol-
3 lows:

4 “(4) The Secretary may assess a civil penalty of
5 not more than \$1,000 a day for each violation by
6 any person of section 302(b)(7)(F)(vi).”

7 (b) AMENDMENTS TO THE INTERNAL REVENUE
8 CODE OF 1986.—

9 (1) IN GENERAL.—Section 412(b)(7) of the In-
10 ternal Revenue Code of 1986 (relating to special
11 rules for multiemployer plans) is amended by adding
12 at the end the following new subparagraph:

13 “(F) AMORTIZATION HIATUS.—

14 “(i) IN GENERAL.—If a multiemployer
15 plan has a net experience loss for any plan
16 year beginning after June 30, 2002, and
17 before July 1, 2006—

18 “(I) the plan may elect to have
19 the 15-year amortization period under
20 paragraph (2)(B)(iv) with respect to
21 the loss begin in any plan year se-
22 lected by the plan from among the 3
23 immediately succeeding plan years,
24 and

1 “(II) if the plan makes an elec-
2 tion under subclause (I) for any plan
3 year, the net experience loss for the
4 year shall, for purposes of deter-
5 mining any charge to the funding
6 standard account, or interest, with re-
7 spect to the loss, be treated in the
8 same manner as if it were a net expe-
9 rience loss occurring in the year se-
10 lected by the plan under subclause (I)
11 (without regard to any net experience
12 loss or gain otherwise determined for
13 such year).

14 Notwithstanding the preceding sentence, a
15 plan may elect to have this subparagraph
16 apply to net experience losses for only 2
17 plan years beginning after June 30, 2002,
18 and before July 1, 2006.

19 “(ii) RESTRICTIONS ON BENEFIT IN-
20 CREASES.—An amendment which increases
21 the liabilities of the plan by reason of any
22 increase in benefits, any change in the ac-
23 crual of benefits, or any change in the rate
24 at which benefits become nonforfeitable

1 under the plan shall not take effect for any
2 plan year in the hiatus period, unless—

3 “(I) the funded current liability
4 percentage (as defined in subsection
5 (l)(8)(B)) as of the end of the plan
6 year is projected (taking into account
7 the effect of the amendment) to be at
8 least 75 percent,

9 “(II) the plan’s actuary certifies
10 that, due to an increase in contribu-
11 tion rates, the normal cost attrib-
12 utable to the benefit increase or other
13 change is expected to be fully funded
14 in the year following the year in which
15 the increase or other change takes ef-
16 fect, and any increase in the plan’s
17 accrued liabilities attributable to the
18 benefit increase or other change is ex-
19 pected to be fully funded by the end
20 of the third plan year following the
21 end of the last hiatus period of the
22 plan, or

23 “(III) the plan amendment is
24 otherwise described in subparagraph
25 (A) or (C) of subsection (f)(2).

1 “(iii) COLLECTIVELY BARGAINED IN-
2 CREASES IN CONTRIBUTIONS.—Clause (ii)
3 shall not apply to an increase in benefits
4 for a group of participants resulting solely
5 from a collectively bargained increase in
6 the contributions made on their behalf.

7 “(iv) HIATUS PERIOD DEFINED.—For
8 purposes of this subparagraph, the term
9 ‘hiatus period’ means any period during
10 which the amortization of a net experience
11 loss is suspended by reason of this sub-
12 paragraph.

13 “(v) INTEREST ACCRUED DURING HIA-
14 TUS.—Interest accrued on any net experi-
15 ence loss during a hiatus period shall be
16 charged to a reconciliation account and not
17 to the funding standard account.

18 “(vi) ELECTION.—An election under
19 this subparagraph shall be made at such
20 time and in such manner as the Secretary
21 of Labor, after consultation with the Sec-
22 retary, may prescribe.”

23 (2) QUALIFICATION REQUIREMENT.—Section
24 401(a) of such Code is amended by inserting after
25 paragraph (34) the following new paragraph:

1 “(35) BENEFIT INCREASES IN CERTAIN MULTI-
2 EMPLOYER PLANS.—A trust which is part of a plan
3 shall not constitute a qualified trust under this sec-
4 tion if the plan adopts an amendment during a hia-
5 tus period (within the meaning of section
6 412(b)(7)(F)(iv)) which the plan is prohibited from
7 adopting by reason of section 412(b)(7)(F)(ii).”.

8 **SEC. 6. 2-YEAR EXTENSION OF TRANSITION RULE TO PEN-**
9 **SION FUNDING REQUIREMENTS.**

10 (a) IN GENERAL.—Section 769(c) of the Retirement
11 Protection Act of 1994, as added by section 1508 of the
12 Taxpayer Relief Act of 1997, is amended—

13 (1) by inserting “except as provided in para-
14 graph (3),” before “the transition rules”, and

15 (2) by adding at the end the following:

16 “(3) SPECIAL RULES.—In the case of plan years be-
17 ginning in 2004 and 2005, the following transition rules
18 shall apply in lieu of the transition rules described in para-
19 graph (2):

20 “(A) For purposes of section 412(l)(9)(A)
21 of the Internal Revenue Code of 1986 and sec-
22 tion 302(d)(9)(A) of the Employee Retirement
23 Income Security Act of 1974, the funded cur-
24 rent liability percentage for any plan year shall
25 be treated as not less than 90 percent.

1 “(B) For purposes of section 412(m) of
2 the Internal Revenue Code of 1986 and section
3 302(e) of the Employee Retirement Income Se-
4 curity Act of 1974, the funded current liability
5 percentage for any plan year shall be treated as
6 not less than 100 percent.

7 “(C) For purposes of determining un-
8 funded vested benefits under section
9 4006(a)(3)(E)(iii) of the Employee Retirement
10 Income Security Act of 1974, the mortality
11 table shall be the mortality table used by the
12 plan.”

13 (b) **EFFECTIVE DATE.**—The amendments made by
14 this section shall apply to plan years beginning after De-
15 cember 31, 2003.

16 **SEC. 7. PROCEDURES APPLICABLE TO DISPUTES INVOLV-**
17 **ING PENSION PLAN WITHDRAWAL LIABILITY.**

18 (a) **IN GENERAL.**—Section 4221 of the Employee Re-
19 tirement Income Security Act of 1974 (29 U.S.C. 1401)
20 is amended by adding at the end the following new sub-
21 section:

22 “(f) **PROCEDURES APPLICABLE TO CERTAIN DIS-**
23 **PUTES.**—

24 “(1) **IN GENERAL.**—If—

1 “(A) a plan sponsor of a plan determines
2 that—

3 “(i) a complete or partial withdrawal
4 of an employer has occurred, or

5 “(ii) an employer is liable for with-
6 drawal liability payments with respect to
7 the complete or partial withdrawal of an
8 employer from the plan,

9 “(B) such determination is based in whole
10 or in part on a finding by the plan sponsor
11 under section 4212(c) that a principal purpose
12 of a transaction that occurred before January
13 1, 1999, was to evade or avoid withdrawal li-
14 ability under this subtitle, and

15 “(C) such transaction occurred at least 5
16 years before the date of the complete or partial
17 withdrawal,

18 then the special rules under paragraph (2) shall be
19 used in applying subsections (a) and (d) of this sec-
20 tion and section 4219(c) to the employer.

21 “(2) SPECIAL RULES.—

22 “(A) DETERMINATION.—Notwithstanding
23 subsection (a)(3)—

1 “(i) a determination by the plan spon-
2 sor under paragraph (1)(B) shall not be
3 presumed to be correct, and

4 “(ii) the plan sponsor shall have the
5 burden to establish, by a preponderance of
6 the evidence, the elements of the claim
7 under section 4212(c) that a principal pur-
8 pose of the transaction was to evade or
9 avoid withdrawal liability under this sub-
10 title.

11 Nothing in this subparagraph shall affect the
12 burden of establishing any other element of a
13 claim for withdrawal liability under this sub-
14 title.

15 “(B) PROCEDURE.—Notwithstanding sub-
16 section (d) and section 4219(c), if an employer
17 contests the plan sponsor’s determination under
18 paragraph (1) through an arbitration pro-
19 ceeding pursuant to subsection (a), or through
20 a claim brought in a court of competent juris-
21 diction, the employer shall not be obligated to
22 make any withdrawal liability payments until a
23 final decision in the arbitration proceeding, or
24 in court, upholds the plan sponsor’s determina-
25 tion.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to any employer that receives a
3 notification under section 4219(b)(1) of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C.
5 1399(b)(1)) after October 31, 2003.