HR 3108 EAS

In the Senate of the United States,

January 28, 2004.

Resolved, That the bill from the House of Representatives (H.R. 3108) entitled `An Act 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.', do pass with the following

AMENDMENT:

Page 2, line 3, strike out all after `section' and insert:

1. SHORT TITLE.

This Act may be cited as the `Pension Stability Act'.

SEC. 2. TEMPORARY REPLACEMENT OF INTEREST RATE ON 30-YEAR TREASURY SECURITIES WITH INTEREST RATE ON CONSERVATIVELY INVESTED LONG-TERM CORPORATE BONDS.

(a) INTERNAL REVENUE CODE OF 1986-

(1) DETERMINATION OF PERMISSIBLE RANGE-

(A) IN GENERAL- Section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended--

(i) in subclause (I), by inserting `or (III)' after `subclause (II)';

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

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

`(II) SPECIAL RULE FOR 2004 AND 2005- In the case of plan years beginning in 2004 or 2005, the term `permissible range' means a rate of interest which is not above, and not more than 10 percent below,

the weighted average of the conservative long-term corporate bond rates during the 4-year period ending on the last day before the beginning of the plan year. The Secretary shall, by regulation, prescribe a method for periodically determining conservative long-term bond rates for purposes of this paragraph. Such rates shall reflect the rates of interest on amounts invested conservatively in long-term corporate bonds and shall be based on the use of 2 or more indices that are in the top 2 quality levels available reflecting average maturities of 20 years or more.'; and

(iv) in subclause (III), as so redesignated--

(I) by inserting `or (II)' after `subclause (I)' the first place it appears; and

(II) by striking `subclause (I)' the second place it appears and inserting `such subclause'.

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

`(IV) SPECIAL RULE FOR 2004 AND 2005- For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).'.

(3) CONFORMING AMENDMENT- Section 412(m)(7) of such Code is amended to read as follows:

`(7) SPECIAL RULE FOR 2002- In any case in which the interest rate used to determine current liability is determined under subsection (l)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability of the plan for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (l)(7)(C)(i)(II).'.

(4) LIMITATION ON CERTAIN ASSUMPTIONS- Section 415(b)(2)(E)(ii) of such Code is amended by inserting `, except that in the case of plan years beginning in 2004 or 2005, `5.5 percent' shall be substituted for `5 percent' in clause (i)' before the period at the end.

(5) ELECTION TO DISREGARD MODIFICATION FOR DEDUCTION PURPOSES- Section 404(a)(1) of such Code is amended by adding at the end the following new subparagraph:

`(F) ELECTION TO DISREGARD MODIFIED INTEREST RATE- An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (l)(7)(C)(i) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this section for contributions to a plan to which such subsections apply.'

(b) Employee Retirement Income Security Act of 1974-

(1) DETERMINATION OF PERMISSIBLE RANGE-

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

(i) in subclause (I), by inserting `or (III)' after `subclause (II)';

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

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

`(II) SPECIAL RULE FOR YEARS 2004 AND 2005- In the case of plan years beginning in 2004 or 2005, the term `permissible range' means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the conservative long-term corporate bond rates (as determined under section 412(b)(5)(B)(ii)(II) of the Internal Revenue Code of 1986) during the 4-year period ending on the last day before the beginning of the plan year.'; and

(iv) in subclause (III), as so redesignated--

(I) by inserting `or (II)' after `subclause (I)' the first place it appears; and

(II) by striking `subclause (I)' the second place it appears and inserting `such subclause'.

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

`(IV) SPECIAL RULE FOR 2004 AND 2005- For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall

be the rate of interest under subsection (b)(5).'.

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

`(7) SPECIAL RULE FOR 2002- In any case in which the interest rate used to determine current liability is determined under subsection (d)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability of the plan for the preceding plan year shall be redetermined using 120 as the specified percentage determined under subsection (d)(7)(C)(i)(II).'.

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

`(V) In the case of plan years beginning in 2004 or 2005, the annual yield taken into account under subclause (II) shall be the annual yield computed by using the conservative long-term corporate bond rate (as determined under section 412(b)(5)(B)(ii)(II) of the Internal Revenue Code of 1986) for the month preceding the month in which the plan year begins.'

(c) EFFECTIVE DATES-

(1) IN GENERAL- Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2003.

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

(3) TRANSITION RULE FOR SECTION 415 LIMITATION- In the case of any participant or beneficiary receiving a distribution after December 31, 2003 and before January 1, 2005, the amount payable under any form of benefit subject to section 417(b)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (a)(4), be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004.

SEC. 3. ELECTION OF ALTERNATIVE DEFICIT REDUCTION

CONTRIBUTION.

(a) AMENDMENT OF 1986 CODE- Section 412(l) of the Internal Revenue Code of 1986 (relating to applicability of subsection) is amended by adding at the end the following new paragraph:

`(12) ALTERNATIVE INCREASE FOR CERTAIN PLANS MEETING REQUIREMENTS IN 2000-

`(A) IN GENERAL- In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of--

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

`(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

`(B) RESTRICTIONS ON BENEFIT INCREASES- No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable shall be adopted during any applicable plan year, unless--

`(i) the funded current liability percentage (as defined in paragraph (8)(B)) as of the end of such plan year is projected (taking into account the effect of the amendment) to be at least 75 percent,

`(ii) the amendment provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment,

`(iii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph, or

`(iv) the amendment is otherwise described in subparagraph (A) or (C) of

subsection (f)(2).

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

`(C) APPLICABLE EMPLOYER- For purposes of this paragraph--

`(i) IN GENERAL- The term `applicable employer' means an employer which is--

`(I) a commercial passenger airline,

`(II) primarily engaged in the production or manufacture of a steel mill product, or the mining or processing of iron ore or beneficiated iron ore products, or

`(III) an organization described in section 501(c)(5) and which established the plan to which this paragraph applies on June 30, 1955.

`(ii) OTHER EMPLOYERS MAY APPLY FOR RELIEF-

`(I) IN GENERAL- Except as provided in subclause (II), an employer other than an employer described in clause (i) shall be treated as an applicable employer if the employer files an application (at such time and in such manner as the Secretary may prescribe) to be treated as an applicable employer for purposes of this paragraph.

`(II) EXCEPTION- Subclause (I) shall not apply to an employer if, within 90 days of the filing of the application, the Secretary determines (taking into account the application of this paragraph) that there is a reasonable likelihood that the employer will be unable to make future required contributions to the plan in a timely manner.

`(D) APPLICABLE PLAN YEAR- For purposes of this paragraph--

`(i) IN GENERAL- The term `applicable plan year' means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

`(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED- An election may not be made under this paragraph with respect to more than 2 plan years.

`(E) ELECTION- An election under this paragraph shall be made at such time and in such manner as the Secretary may prescribe.'

(b) Amendment of ERISA- Section 302(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(d)) is amended by adding at the end the following new paragraph:

`(12) ALTERNATIVE INCREASE FOR CERTAIN PLANS MEETING REQUIREMENTS IN 2000-

`(A) IN GENERAL- In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of--

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

`(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

`(B) RESTRICTIONS ON BENEFIT INCREASES- No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any applicable plan year, unless--

`(i) the funded current liability percentage (as defined in paragraph (8)(B)) as of the end of such plan year is projected (taking into account the effect of the amendment) to be at least 75 percent,

`(ii) the amendment provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment,

`(iii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph, or

`(iv) the amendment is otherwise described in subparagraph (A) or (C) of section 304(b)(2).

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

`(C) APPLICABLE EMPLOYER- For purposes of this paragraph--

`(i) IN GENERAL- The term `applicable employer' means an employer which is--

`(I) a commercial passenger airline,

`(II) primarily engaged in the production or manufacture of a steel mill product, or the mining or processing of iron ore or beneficiated iron ore products, or

`(III) an organization described in section 501(c)(5) of the Internal Revenue Code of 1986 and which established the plan to which this paragraph applies on June 30, 1955.

`(ii) OTHER EMPLOYERS MAY APPLY FOR RELIEF-

`(I) IN GENERAL- Except as provided in subclause (II), an employer other than an employer described in clause (i) shall be treated as an applicable employer if the employer files an application (at such time and in such manner as the Secretary of the Treasury may prescribe) to be treated as an applicable employer for purposes of this paragraph.

`(II) EXCEPTION- Subclause (I) shall not apply to an employer if, within 90 days of the filing of the application, the Secretary of the Treasury determines (taking into account the application of this paragraph) that there is a reasonable likelihood that the employer will be unable to make future required contributions to the plan in a timely manner.

`(D) APPLICABLE PLAN YEAR- For purposes of this paragraph--

`(i) IN GENERAL- The term `applicable plan year' means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

`(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED- An election may not be made under this paragraph with respect to more than 2 plan years.

`(E) NOTICE REQUIREMENTS FOR PLANS ELECTING ALTERNATIVE DEFICIT REDUCTION CONTRIBUTIONS-

`(i) IN GENERAL- If an employer elects an alternative deficit reduction contribution under this paragraph and section 412(l)(12) of the Internal Revenue Code of 1986 for any year, the employer shall provide, within 30 days (120 days in the case of an employer described in subparagraph (C)(ii)) of filing the election for such year, written notice of the election to participants and beneficiaries and to the Pension Benefit Guaranty Corporation.

`(ii) NOTICE TO PARTICIPANTS AND BENEFICIARIES- The notice under clause (i) to participants and beneficiaries shall include with respect to any election--

`(I) the due date of the alternative deficit reduction contribution and the amount by which such contribution was reduced from the amount which would have been owed if the election were not made, and

`(II) a description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation and an explanation of the limitations on the guarantee and the circumstances under which such limitations apply, including the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

`(iii) NOTICE TO PBGC- The notice under clause (i) to the Pension Benefit Guaranty Corporation shall include--

`(I) the information described in clause (ii)(I),

`(II) the number of years it will take to restore the plan to full funding

if the employer only makes the required contributions, and

`(III) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer making the election.

`(F) ELECTION- An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.'

(c) EFFECT OF ELECTION- An election under section 412(l)(12) of the Internal Revenue Code of 1986 or section 302(d)(12) of the Employee Retirement Income Security Act of 1974 (as added by this section) with respect to a plan shall not invalidate any obligation (pursuant to a collective bargaining agreement in effect on the date of the election) to provide benefits, to change the accrual of benefits, or to change the rate at which benefits become nonforfeitable under the plan .

(d) PENALTY FOR FAILING TO PROVIDE NOTICE- Section 502(c)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(3)) is amended by inserting `or who fails to meet the requirements of section 302(d)(12)(E) with respect to any participant or beneficiary' after `101(e)(2)'.

SEC. 4. MULTIEMPLOYER PLAN FUNDING NOTICES.

(a) IN GENERAL- Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 104) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

`(d) MULTIEMPLOYER DEFINED BENEFIT PLAN FUNDING NOTICES-

`(1) IN GENERAL- The administrator of a defined benefit plan which is a multiemployer plan shall for each plan year provide a plan funding notice to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and to each employer that has an obligation to contribute under the plan.

`(2) INFORMATION CONTAINED IN NOTICES-

`(A) IDENTIFYING INFORMATION- Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan's principal administrative officer, each plan sponsor's employer identification number, and the plan number of the plan.

`(B) SPECIFIC INFORMATION- A plan funding notice under paragraph (1) shall include--

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

`(ii) a statement of the value of the plan's assets, the amount of benefit payments, and the ratio of the assets to the payments for the plan year to which the report relates;

`(iii) a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and

`(iv) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

`(C) OTHER INFORMATION- Each notice under paragraph (1) shall include any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.

`(3) TIME FOR PROVIDING NOTICE- Any notice under paragraph (1) shall be provided no later than two months after the deadline (including extensions) for filing the annual report for the plan year to which the notice relates.

`(4) FORM AND MANNER- Any notice under paragraph (1)--

`(A) shall be provided in a form and manner prescribed in regulations of the Secretary,

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

`(C) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.'

(b) PENALTIES- Section 502(c)(1) of the Employee Retirement Income Security Act of 1974 (29

U.S.C. 1132(c)(1)) is amended by striking `or section 101(e)(1)' and inserting `, section 101(e)(1), or section 104(d)'.

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

(d) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 2004.

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

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974-

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

`(F)(i) If a multiemployer plan has a net experience loss for any plan year beginning after June 30, 2002, and before July 1, 2006--

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

`(II) if the plan makes an election under subclause (I) for any plan year, the net experience loss for the year shall, for purposes of determining any charge to the funding standard account, or interest, with respect to the loss, be treated in the same manner as if it were a net experience loss occurring in the year selected by the plan under subclause (I) (without regard to any net experience loss or gain otherwise determined for such year).

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

`(ii) An amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall not take effect for any plan year in the hiatus period, unless--

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

`(II) the plan's actuary certifies that, due to an increase in contribution rates, the normal cost attributable to the benefit increase or other change is expected to be fully funded in the year following the year the increase or other change takes effect, and any increase in the plan's accrued liabilities attributable to the benefit increase or other change is expected to be fully funded by the end of the third plan year following the end of the last hiatus period of the plan, or

`(III) the plan amendment is otherwise described in subparagraph (A) or (C) of section 304(b)(2).

`(iii) Clause (ii) shall not apply to an increase in benefits for a group of participants resulting solely from a collectively bargained increase in the contributions made on their behalf.

`(iv) For purposes of this subparagraph, the term `hiatus period' means any period during which the amortization of a net experience loss is suspended by reason of this subparagraph.

`(v) Interest accrued on any net experience loss during a hiatus period shall be charged to a reconciliation account and not to the funding standard account.

`(vi) If a plan elects an amortization hiatus under this subparagraph and section 412(b)(7)(F) of the Internal Revenue Code of 1986 for any plan year, the plan administrator shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries, to each labor organization representing such participants or beneficiaries, and to each employer that has an obligation to contribute under the plan. Such notice shall include with respect to any election the amount of the net experience loss to be deferred and the period of the deferral. Such notice shall also include the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

`(vii) An election under this subparagraph shall be made at such time and in such manner as the Secretary, after consultation with the Secretary of the Treasury, may prescribe.'

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

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

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986-

(1) IN GENERAL- Section 412(b)(7) of the Internal Revenue Code of 1986 (relating to special rules for multiemployer plans) is amended by adding at the end the following new subparagraph:

`(F) AMORTIZATION HIATUS-

`(i) IN GENERAL- If a multiemployer plan has a net experience loss for any plan year beginning after June 30, 2002, and before July 1, 2006--

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

`(II) if the plan makes an election under subclause (I) for any plan year, the net experience loss for the year shall, for purposes of determining any charge to the funding standard account, or interest, with respect to the loss, be treated in the same manner as if it were a net experience loss occurring in the year selected by the plan under subclause (I) (without regard to any net experience loss or gain otherwise determined for such year).

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

`(ii) RESTRICTIONS ON BENEFIT INCREASES- An amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall not take effect for any plan year in the hiatus period, unless--

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

`(II) the plan's actuary certifies that, due to an increase in

contribution rates, the normal cost attributable to the benefit increase or other change is expected to be fully funded in the year following the year in which the increase or other change takes effect, and any increase in the plan's accrued liabilities attributable to the benefit increase or other change is expected to be fully funded by the end of the third plan year following the end of the last hiatus period of the plan, or

`(III) the plan amendment is otherwise described in subparagraph (A) or (C) of subsection (f)(2).

`(iii) COLLECTIVELY BARGAINED INCREASES IN CONTRIBUTIONS- Clause (ii) shall not apply to an increase in benefits for a group of participants resulting solely from a collectively bargained increase in the contributions made on their behalf.

`(iv) HIATUS PERIOD DEFINED- For purposes of this subparagraph, the term `hiatus period' means any period during which the amortization of a net experience loss is suspended by reason of this subparagraph.

`(v) INTEREST ACCRUED DURING HIATUS- Interest accrued on any net experience loss during a hiatus period shall be charged to a reconciliation account and not to the funding standard account.

`(vi) ELECTION- An election under this subparagraph shall be made at such time and in such manner as the Secretary of Labor, after consultation with the Secretary, may prescribe.'

(2) QUALIFICATION REQUIREMENT- Section 401(a) of such Code is amended by inserting after paragraph (34) the following new paragraph:

`(35) BENEFIT INCREASES IN CERTAIN MULTIEMPLOYER PLANS- A trust which is part of a plan shall not constitute a qualified trust under this section if the plan adopts an amendment during a hiatus period (within the meaning of section 412(b)(7)(F)(iv)) which the plan is prohibited from adopting by reason of section 412(b)(7)(F)(ii).'.

SEC. 6. 2-YEAR EXTENSION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

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

(1) by inserting `except as provided in paragraph (3),' before `the transition rules', and

(2) by adding at the end the following:

`(3) SPECIAL RULES- In the case of plan years beginning in 2004 and 2005, the following transition rules shall apply in lieu of the transition rules described in paragraph (2):

`(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

`(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

`(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.'

(b) EFFECTIVE DATE- The amendments made by this section shall apply to plan years beginning after December 31, 2003.

SEC. 7. PROCEDURES APPLICABLE TO DISPUTES INVOLVING PENSION PLAN WITHDRAWAL LIABILITY.

(a) IN GENERAL- Section 4221 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401) is amended by adding at the end the following new subsection:

`(f) PROCEDURES APPLICABLE TO CERTAIN DISPUTES-

`(1) IN GENERAL- If--

`(A) a plan sponsor of a plan determines that--

`(i) a complete or partial withdrawal of an employer has occurred, or

`(ii) an employer is liable for withdrawal liability payments with respect to the complete or partial withdrawal of an employer from the plan,

`(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of a transaction that occurred before January 1, 1999, was to evade or avoid withdrawal liability under this subtitle, and

`(C) such transaction occurred at least 5 years before the date of the complete or partial withdrawal,

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

`(2) SPECIAL RULES-

`(A) DETERMINATION- Notwithstanding subsection (a)(3)--

`(i) a determination by the plan sponsor under paragraph (1)(B) shall not be presumed to be correct, and

`(ii) the plan sponsor shall have the burden to establish, by a preponderance of the evidence, the elements of the claim under section 4212(c) that a principal purpose of the transaction was to evade or avoid withdrawal liability under this subtitle.

Nothing in this subparagraph shall affect the burden of establishing any other element of a claim for withdrawal liability under this subtitle.

`(B) PROCEDURE- Notwithstanding subsection (d) and section 4219(c), if an employer contests the plan sponsor's determination under paragraph (1) through an arbitration proceeding pursuant to subsection (a), or through a claim brought in a court of competent jurisdiction, the employer shall not be obligated to make any withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination.'.

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

SEC. 8. SENSE OF THE SENATE ON STATUS OF PRIVATE PENSION PLANS.

(a) FINDINGS- Congress makes the following findings:-

(1) The private pension system is integral to the retirement security of Americans, along with individual savings and Social Security.

(2) The Pension Benefit Guaranty Corporation (PBGC) is responsible for insuring the nation's private pension system, and currently insures the pensions of 34,500,000 participants in 29,500 single-employer plans, and 9,700,000 participants in more than 1,600 multiemployer plans.

(3) The PBGC announced on January 15, 2004, that it suffered a net loss in fiscal year 2003 of $7,600,000,000 for single-employer pension plans, bringing the PBGC's deficit to $11,200,000,000. This deficit is the PBGC's worst on record, three times larger than the $3,600,000,000 deficit experienced in fiscal year 2002.

(4) The PBGC also announced that the separate insurance program for multiemployer pension plans sustained a net loss of $419,000,000 in fiscal year 2003, resulting in a fiscal year-end deficit of $261,000,000. The 2003 multiemployer plan deficit is the first deficit in more than 20 years and is the largest deficit on record.

(5) The PBGC estimates that the total underfunding in multiemployer pension plans is roughly $100,000,000,000 and in single-employer plans is approximately $400,000,000,000. This underfunding is due in part to the recent decline in the stock market and low interest rates, but is also due to demographic changes. For example, in 1980, there were four active workers for every one retiree in a multiemployer plan, but in 2002, there was only one active worker for every one retiree.

(6) This pension plan underfunding is concentrated in mature and often-declining industries, where plan liabilities will come due sooner.

(7) Neither the Senate Committee on Finance nor the Senate Committee on Health, Education, Labor and Pensions (HELP), the committees of jurisdiction over pension matters, has held hearings this Congress nor reported legislation addressing the funding of multiemployer pension plans;

(8) The Senate is concerned about the current funding status of the private pension system, both single and multi-employer plans;

(9) The Senate is concerned about the potential liabilities facing the PBGC and, as a result, the potential burdens facing healthy pension plans and taxpayers;

(b) SENSE OF THE SENATE- It is the sense of the Senate that the Committee on Finance and the Committee on Health, Education, Labor and Pensions should conduct hearings on the status of

the multiemployer pension plans, and should work in consultation with the Departments of Labor and Treasury on permanent measures to strengthen the integrity of the private pension system in order to protect the benefits of current and future pension plan beneficiaries.

SEC. 9. EXTENSION OF TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) Amendment of Internal Revenue Code of 1986- Paragraph (5) of section 420(b) of the Internal Revenue Code of 1986 (relating to expiration) is amended by striking `December 31, 2005' and inserting `December 31, 2013'.

(b) AMENDMENTS OF ERISA-

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking `Tax Relief Extension Act of 1999' and inserting `Pension Stability Act'.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking `Tax Relief Extension Act of 1999' and inserting `Pension Stability Act'.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended--

(A) by striking `January 1, 2006' and inserting `January 1, 2014', and

(B) by striking `Tax Relief Extension Act of 1999' and inserting `Pension Stability Act'.

SEC. 10. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL- Section 501(c)(15)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

`(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if--

`(i) the gross receipts for the taxable year do not exceed $600,000, and

`(ii) more than 50 percent of such gross receipts consist of premiums.'.

(b) CONTROLLED GROUP RULE- Section 501(c)(15)(C) of the Internal Revenue Code of 1986 is amended by inserting `, except that in applying section 1563 for purposes of section 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded' before the period at the end.

(c) CONFORMING AMENDMENT- Clause (i) of section 831(b)(2)(A) of the Internal Revenue Code of 1986 is amended by striking `exceed $350,000 but'.

(d) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 11. DEFINITION OF INSURANCE COMPANY FOR SECTION 831.

(a) IN GENERAL- Section 831 of the Internal Revenue Code of 1986 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

`(c) INSURANCE COMPANY DEFINED- For purposes of this section, the term `insurance company' has the meaning given to such term by section 816(a)).'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 12. FUNDS FOR REBUILDING FISH STOCKS.

Section 105 of the Miscellaneous Appropriations and Offsets Act, 2004 (division H of the Consolidated appropriations Act, 2004) is repealed.

Attest:

Secretary.

108th CONGRESS

2d Session

H. R. 3108

AMENDMENT

END